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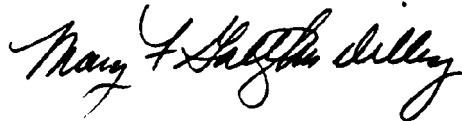
Containing all laws of a general and permanent nature through the 1998 regular session, which adjourned sine die March 12, 1998.

REVISED CODE OF WASHINGTON
1998 Edition

• 1998 State of Washington

CERTIFICATE

The 1998 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



MARY F. GALLAGHER DILLEY, Chair,
STATUTE LAW COMMITTEE

PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

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Title 60

LIENS

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Chapter 60.04

MECHANICS' AND MATERIALMEN'S LIENS

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Crop lien for furnishing work or labor. RCW 60.11.040.

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

(1) "Construction agent" means any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter.

(2) "Contract price" means the amount agreed upon by the contracting parties, or if no amount is agreed upon, then the customary and reasonable charge therefor.

(3) "Draws" means periodic disbursements of interim or construction financing by a lender.

(4) "Furnishing labor, professional services, materials, or equipment" means the performance of any labor or professional services, the contribution owed to any employee benefit plan on account of any labor, the provision of any

supplies or materials, and the renting, leasing, or otherwise supplying of equipment for the improvement of real property.

(5) "Improvement" means: (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

(6) "Interim or construction financing" means that portion of money secured by a mortgage, deed of trust, or other encumbrance to finance improvement of, or to real property, but does not include:

(a) Funds to acquire real property;

(b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;

(c) Funds to pay loan, commitment, title, legal, closing, recording, or appraisal fees;

(d) Funds to pay other customary fees, which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;

(e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to this chapter.

(7) "Labor" means exertion of the powers of body or mind performed at the site for compensation. "Labor" includes amounts due and owed to any employee benefit plan on account of such labor performed.

(8) "Mortgagee" means a person who has a valid mortgage of record or deed of trust of record securing a loan.

(9) "Owner-occupied" means a single-family residence occupied by the owner as his or her principal residence.

(10) "Payment bond" means a surety bond issued by a surety licensed to issue surety bonds in the state of Washington that confers upon potential claimants the rights of third party beneficiaries.

(11) "Potential lien claimant" means any person or entity entitled to assert lien rights under this chapter who has otherwise complied with the provisions of this chapter and is registered or licensed if required to be licensed or registered by the provisions of the laws of the state of Washington.

(12) "Prime contractor" includes all contractors, general contractors, and specialty contractors, as defined by chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who contract directly with a property owner or their common law agent to assume primary responsibility for the creation of an improvement to real property, and includes property owners or their common law agents who are contractors, general contractors, or specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year.

(13) "Professional services" means surveying, establishing or marking the boundaries of, preparing maps, plans, or specifications for, or inspecting, testing, or otherwise

performing any other architectural or engineering services for the improvement of real property.

(14) "Real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, trust, or individual that makes loans secured by real property located in the state of Washington.

(15) "Site" means the real property which is or is to be improved.

(16) "Subcontractor" means a general contractor or specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who is otherwise required to be registered or licensed by law, who contracts for the improvement of real property with someone other than the owner of the property or their common law agent. [1992 c 126 § 1; 1991 c 281 § 1.]

60.04.021 Lien authorized. Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner. [1991 c 281 § 2.]

60.04.031 Notices—Exceptions. (1) Except as otherwise provided in this section, every person furnishing professional services, materials, or equipment for the improvement of real property shall give the owner or reputed owner notice in writing of the right to claim a lien. If the prime contractor is in compliance with the requirements of RCW 19.27.095, 60.04.230, and 60.04.261, this notice shall also be given to the prime contractor as described in this subsection unless the potential lien claimant has contracted directly with the prime contractor. The notice may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after the date which is sixty days before:

(a) Mailing the notice by certified or registered mail to the owner or reputed owner; or

(b) Delivering or serving the notice personally upon the owner or reputed owner and obtaining evidence of delivery in the form of a receipt or other acknowledgement signed by the owner or reputed owner or an affidavit of service.

In the case of new construction of a single-family residence, the notice of a right to claim a lien may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after a date which is ten days before the notice is given as described in this subsection.

(2) Notices of a right to claim a lien shall not be required of:

(a) Persons who contract directly with the owner or the owner's common law agent;

(b) Laborers whose claim of lien is based solely on performing labor; or

(c) Subcontractors who contract for the improvement of real property directly with the prime contractor, except as provided in subsection (3)(b) of this section.

(3) Persons who furnish professional services, materials, or equipment in connection with the repair, alteration, or

remodel of an existing owner-occupied single-family residence or appurtenant garage:

(a) Who contract directly with the owner-occupier or their common law agent shall not be required to send a written notice of the right to claim a lien and shall have a lien for the full amount due under their contract, as provided in RCW 60.04.021; or

(b) Who do not contract directly with the owner-occupier or their common law agent shall give notice of the right to claim a lien to the owner-occupier. Liens of persons furnishing professional services, materials, or equipment who do not contract directly with the owner-occupier or their common law agent may only be satisfied from amounts not yet paid to the prime contractor by the owner at the time the notice described in this section is received, regardless of whether amounts not yet paid to the prime contractor are due. For the purposes of this subsection "received" means actual receipt of notice by personal service, or registered or certified mail, or three days after mailing by registered or certified mail, excluding Saturdays, Sundays, or legal holidays.

(4) The notice of right to claim a lien described in subsection (1) of this section, shall include but not be limited to the following information and shall substantially be in the following form, using lower-case and upper-case ten-point type where appropriate.

NOTICE TO OWNER

IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

PROTECT YOURSELF FROM PAYING TWICE

To: Date:

Re: (description of property: Street address or general location.)

From:

AT THE REQUEST OF: (Name of person ordering the professional services, materials, or equipment)

THIS IS NOT A LIEN: This notice is sent to you to tell you who is providing professional services, materials, or equipment for the improvement of your property and to advise you of the rights of these persons and your responsibilities. Also take note that laborers on your project may claim a lien without sending you a notice.

OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

Under Washington law, those who furnish labor, professional services, materials, or equipment for the repair, remodel, or alteration of your owner-occupied principal residence and who are not paid, have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

The law limits the amount that a lien claimant can claim against your property. Claims may only be made against that portion of the contract price you have not yet paid to your prime contractor as of the time this notice was given to you or three days after this notice was mailed to you. Review the back of this notice for more information and ways to avoid lien claims.

COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

We have or will be providing professional services, materials, or equipment for the improvement of your commercial or new residential project. In the event you or your contractor fail to pay us, we may file a lien against your property. A lien may be claimed for all professional services, materials, or equipment furnished after a date that is sixty days before this notice was given to you or mailed to you, unless the improvement to your property is the construction of a new single-family residence, then ten days before this notice was given to you or mailed to you.

Sender:
Address:
Telephone:

Brief description of professional services, materials, or equipment provided or to be provided:

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

This notice is sent to inform you that we have or will provide professional services, materials, or equipment for the improvement of your property. We expect to be paid by the person who ordered our services, but if we are not paid, we have the right to enforce our claim by filing a construction lien against your property.

LEARN more about the lien laws and the meaning of this notice by discussing them with your contractor, suppliers, Department of Labor and Industries, the firm sending you this notice, your lender, or your attorney.

COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods available to protect your property from construction liens. The following are two of the more commonly used methods.

DUAL PAYCHECKS (Joint Checks): When paying your contractor for services or materials, you may make checks payable jointly to the contractor and the firms furnishing you this notice.

LIEN RELEASES: You may require your contractor to provide lien releases signed by all the suppliers and subcontractors from whom you have received this notice. If they cannot obtain lien releases because you have not paid them, you may use the dual payee check method to protect yourself.

YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.

YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT RECEIVED IT, ASK THEM FOR IT.

(5) Every potential lien claimant providing professional services where no improvement as defined in RCW

60.04.011(5) (a) or (b) has been commenced, and the professional services provided are not visible from an inspection of the real property may record in the real property records of the county where the property is located a notice which shall contain the professional service provider's name, address, telephone number, legal description of the property, the owner or reputed owner's name, and the general nature of the professional services provided. If such notice is not recorded, the lien claimed shall be subordinate to the interest of any subsequent mortgagee and invalid as to the interest of any subsequent purchaser if the mortgagee or purchaser acts in good faith and for a valuable consideration acquires an interest in the property prior to the commencement of an improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of the professional services being provided. The notice described in this subsection shall be substantially in the following form:

NOTICE OF FURNISHING PROFESSIONAL SERVICES

That on the (day) day of (month and year), (name of provider) began providing professional services upon or for the improvement of real property legally described as follows:

[Legal Description is mandatory]

The general nature of the professional services provided is

The owner or reputed owner of the real property is

(Signature)

(Name of Claimant)

(Street Address)

(City, State, Zip Code)

(Phone Number)

(6) A lien authorized by this chapter shall not be enforced unless the lien claimant has complied with the applicable provisions of this section. [1992 c 126 § 2; 1991 c 281 § 3.]

60.04.035 Acts of coercion—Application of chapter 19.86 RCW. The legislature finds that acts of coercion or attempted coercion, including threats to withhold future contracts, made by a contractor or developer to discourage a contractor, subcontractor, or material or equipment supplier from giving an owner the notice of right to claim a lien required by RCW 60.04.031, or from filing a claim of lien under this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. These acts of coercion are not reasonable in relation to the development and preservation of business. These acts of coercion shall constitute an unfair or

deceptive act or practice in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1992 c 126 § 3.]

60.04.041 Contractor registration. A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. No lien rights described in this chapter shall be lost or denied by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant. [1992 c 126 § 4; 1991 c 281 § 4.]

60.04.051 Property subject to lien. The lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement from the land which is subject to the lien. [1992 c 126 § 5; 1991 c 281 § 5.]

60.04.061 Priority of lien. The claim of lien created by this chapter upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant. [1991 c 281 § 6.]

60.04.071 Release of lien rights. Upon payment and acceptance of the amount due to the lien claimant and upon demand of the owner or the person making payment, the lien claimant shall immediately prepare and execute a release of all lien rights for which payment has been made, and deliver the release to the person making payment. In any suit to compel deliverance of the release thereafter in which the court determines the delay was unjustified, the court shall, in addition to ordering the deliverance of the release, award the costs of the action including reasonable attorneys' fees and any damages. [1991 c 281 § 7.]

60.04.081 Frivolous claim—Procedure. (1) Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous

and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1992 c 126 § 6; 1991 c 281 § 8.]

60.04.091 Recording—Time—Contents of lien. Every person claiming a lien under RCW 60.04.021 shall file for recording, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due. The notice of claim of lien:

(1) Shall state in substance and effect:

(a) The name, phone number, and address of the claimant;

(b) The first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;

(c) The name of the person indebted to the claimant;

(d) The street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;

(e) The name of the owner or reputed owner of the property, if known, and, if not known, that fact shall be stated; and

60.04.131 Claims—Designation of amount due. In every case in which the notice of claim of lien is recorded against two or more separate pieces of property owned by the same person or owned by two or more persons jointly or otherwise, who contracted for the labor, professional services, material, or equipment for which the notice of claim of lien is recorded, the person recording the notice of claim of lien shall designate in the notice of claim of lien the amount due on each piece of property, otherwise the lien is subordinated to other liens that may be established under this chapter. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon any of such pieces of property. [1991 c 281 § 13.]

60.04.141 Lien—Duration—Procedural limitations. No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within ninety days of the date of filing the action; or, if credit is given and the terms thereof are stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case the action is not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the action for want of prosecution, and the dismissal of the action or a judgment rendered thereon that no lien exists shall constitute a cancellation of the lien. This is a period of limitation, which shall be tolled by the filing of any petition seeking protection under Title Eleven, United States Code by an owner of any property subject to the lien established by this chapter. [1992 c 126 § 8; 1991 c 281 § 14.]

60.04.151 Rights of owner—Recovery options. The lien claimant shall be entitled to recover upon the claim recorded the contract price after deducting all claims of other lien claimants to whom the claimant is liable, for furnishing labor, professional services, materials, or equipment; and in all cases where a claim of lien shall be recorded under this chapter for labor, professional services, materials, or equipment supplied to any lien claimant, he or she shall defend any action brought thereupon at his or her own expense. During the pendency of the action, the owner may withhold from the prime contractor the amount of money for which a claim is recorded by any subcontractor, supplier, or laborer. In case of judgment against the owner or the owner's property, upon the lien, the owner shall be entitled to deduct from sums due to the prime contractor the principal amount of the judgment from any amount due or to become due from the owner to the prime contractor plus such costs, including interest and attorneys' fees, as the court deems just and equitable, and the owner shall be entitled to recover back from the prime contractor the amount for which a lien or liens are established in excess of any sum that may remain due from the owner to the prime contractor. [1992 c 126 § 9; 1991 c 281 § 15.]

60.04.161 Bond in lieu of claim. Any owner of real property subject to a recorded claim of lien under this

chapter, or contractor, subcontractor, lender, or lien claimant who disputes the correctness or validity of the claim of lien may record, either before or after the commencement of an action to enforce the lien, in the office of the county recorder or auditor in the county where the claim of lien was recorded, a bond issued by a surety company authorized to issue surety bonds in the state. The surety shall be listed in the latest federal department of the treasury list of surety companies acceptable on federal bonds, published in the Federal Register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded. The bond shall contain a description of the claim of lien and real property involved, and be in an amount equal to the greater of five thousand dollars or two times the amount of the lien claimed if it is ten thousand dollars or less, and in an amount equal to or greater than one and one-half times the amount of the lien if it is in excess of ten thousand dollars. If the claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the claim of lien. A separate bond shall be required for each claim of lien made by separate claimants. However, a single bond may be used to guarantee payment of amounts claimed by more than one claim of lien by a single claimant so long as the amount of the bond meets the requirements of this section as applied to the aggregate sum of all claims by such claimant. The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien. The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed. Unless otherwise prohibited by law, if no action is commenced to recover on a lien within the time specified in RCW 60.04.141, the surety shall be discharged from liability under the bond. If an action is timely commenced, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond.

Nothing in this section shall in any way prohibit or limit the use of other methods, devised by the affected parties to secure the obligation underlying a claim of lien and to obtain a release of real property from a claim of lien. [1992 c 126 § 10; 1991 c 281 § 16.]

60.04.171 Foreclosure—Parties. The lien provided by this chapter, for which claims of lien have been recorded, may be foreclosed and enforced by a civil action in the court having jurisdiction in the manner prescribed for the judicial foreclosure of a mortgage. The court shall have the power to order the sale of the property. In any action brought to foreclose a lien, the owner shall be joined as a party. The interest in the real property of any person who, prior to the commencement of the action, has a recorded interest in the property, or any part thereof, shall not be foreclosed or affected unless they are joined as a party.

A person shall not begin an action to foreclose a lien upon any property while a prior action begun to foreclose

another lien on the same property is pending, but if not made a party plaintiff or defendant to the prior action, he or she may apply to the court to be joined as a party thereto, and his or her lien may be foreclosed in the same action. The filing of such application shall toll the running of the period of limitation established by RCW 60.04.141 until disposition of the application or other time set by the court. The court shall grant the application for joinder unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions as the court deems just. If a lien foreclosure action is filed during the pendency of another such action, the court may, on its own motion or the motion of any party, consolidate actions upon such terms and conditions as the court deems just, unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions. If consolidation of actions is not permissible under this section, the lien foreclosure action filed during the pendency of another such action shall not be dismissed if the filing was the result of mistake, inadvertence, surprise, excusable neglect, or irregularity. An action to foreclose a lien shall not be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien. [1992 c 126 § 11; 1991 c 281 § 17.]

60.04.181 Rank of lien—Application of proceeds—Attorneys' fees. (1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order:

- (a) Liens for the performance of labor;
- (b) Liens for contributions owed to employee benefit plans;
- (c) Liens for furnishing material, supplies, or equipment;
- (d) Liens for subcontractors, including but not limited to their labor and materials; and
- (e) Liens for prime contractors, or for professional services.

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, pro rata among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against any party liable therefor.

(3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

(4) Real property against which a lien under this chapter is enforced may be ordered sold by the court and the proceeds deposited into the registry of the clerk of the court, pending further determination respecting distribution of the proceeds of the sale. [1992 c 126 § 12; 1991 c 281 § 18.]

60.04.190 Destruction or concealment of property—Removal from premises—Penalty. See RCW 61.12.030, 9.45.060.

60.04.191 Effect of note—Personal action preserved. The taking of a promissory note or other evidence of indebtedness for any labor, professional services, material, or equipment furnished for which a lien is created by this chapter does not discharge the lien therefor, unless expressly received as payment and so specified therein.

Nothing in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for the furnishing of labor, professional services, material, or equipment to maintain a personal action to recover the debt against any person liable therefor. [1991 c 281 § 19.]

60.04.201 Material exempt from process—Exception. Whenever material is furnished for use in the improvement of property subject to a lien created by this chapter, the material is not subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of the material, except a debt due for the purchase money thereof, so long as in good faith, the material is about to be applied in the improvement of such property. [1991 c 281 § 20.]

60.04.211 Lien—Effect on community interest. The claim of lien, when filed as required by this chapter, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to the lien. [1991 c 281 § 21.]

60.04.221 Notice to lender—Withholding of funds. Any lender providing interim or construction financing where there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures and the rights and liabilities of the lender and potential lien claimant shall be affected as follows:

(1) Any potential lien claimant who has not received a payment within five days after the date required by their contract, invoice, employee benefit plan agreement, or purchase order may within thirty-five days of the date required for payment of the contract, invoice, employee benefit plan agreement, or purchase order, give a notice as provided in subsections (2) and (3) of this section of the sums due and to become due, for which a potential lien claimant may claim a lien under this chapter.

(2) The notice shall be signed by the potential lien claimant or some person authorized to act on his or her behalf.

(3) The notice shall be given in writing to the lender at the office administering the interim or construction financing,

with a copy given to the owner and appropriate prime contractor. The notice shall be given by:

- (a) Mailing the notice by certified or registered mail to the lender, owner, and appropriate prime contractor; or
- (b) Delivering or serving the notice personally and obtaining evidence of delivery in the form of a receipt or other acknowledgment signed by the lender, owner, and appropriate prime contractor, or an affidavit of service.

(4) The notice shall state in substance and effect as follows:

- (a) The person, firm, trustee, or corporation filing the notice is entitled to receive contributions to any type of employee benefit plan or has furnished labor, professional services, materials, or equipment for which a lien is given by this chapter.
- (b) The name of the prime contractor, common law agent, or construction agent ordering the same.
- (c) A common or street address of the real property being improved or the legal description of the real property.
- (d) The name, business address, and telephone number of the lien claimant.

The notice to the lender may contain additional information but shall be in substantially the following form:

NOTICE TO REAL PROPERTY LENDER
(Authorized by RCW)

TO:
(Name of Lender)
.
(Administrative Office-Street Address)
.
(City) (State) (Zip)

AND TO:
(Owner)

AND TO:
(Prime Contractor-If Different Than Owner)
.
(Name of Laborer, Professional,
Materials, or Equipment Supplier)

whose business address is, did at the property located at

(Check appropriate box) () perform labor () furnish professional services () provide materials () supply equipment as follows:

.
.
.

which was ordered by
(Name of Person)

whose address was stated to be
.

The amount owing to the undersigned according to contract or purchase order for labor, supplies, or equipment (as above mentioned) is the sum of Dollars (\$). Said sums became due and owing as of

.
(State Date)

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the extent there remain undisbursed funds) the sum of Dollars (\$).

IMPORTANT

Failure to comply with the requirements of this notice may subject the lender to a whole or partial compromise of any priority lien interest it may have pursuant to RCW 60.04.226.

DATE:

By:

Its:

(5) After the receipt of the notice, the lender shall withhold from the next and subsequent draws the amount claimed to be due as stated in the notice. Alternatively, the lender may obtain from the prime contractor or borrower a payment bond for the benefit of the potential lien claimant in an amount sufficient to cover the amount stated in the potential lien claimant's notice. The lender shall be obligated to withhold amounts only to the extent that sufficient interim or construction financing funds remain undisbursed as of the date the lender receives the notice.

(6) Sums so withheld shall not be disbursed by the lender, except by the written agreement of the potential lien claimant, owner, and prime contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(7) In the event a lender fails to abide by the provisions of *subsections (4) and (5) of this section, then the mortgage, deed of trust, or other encumbrance securing the lender shall be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event more than the amount stated in the notice plus costs as fixed by the court, including reasonable attorneys' fees.

(8) Any potential lien claimant shall be liable for any loss, cost, or expense, including reasonable attorneys' fees and statutory costs, to a party injured thereby arising out of any unjust, excessive, or premature notice filed under purported authority of this section. "Notice" as used in this subsection does not include notice given by a potential lien claimant of the right to claim liens under this chapter where no actual claim is made.

(9)(a) Any owner of real property subject to a notice to real property lender under this section, or the contractor, subcontractor, lender, or lien claimant who believes the claim that underlies the notice is frivolous and made without reasonable cause, or is clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order commanding the potential lien claimant who issued the notice to the real property lender to appear before the court at a time no earlier than six nor later than fifteen days from the date of service of the application and order on the potential lien claimant, and show cause, if any he or she has, why the notice to real property lender should not be declared void. The motion shall state the grounds upon which relief is asked and shall be supported by the affidavit of the

applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(b) The order shall clearly state that if the potential lien claimant fails to appear at the time and place noted, the notice to lender shall be declared void and that the potential lien claimant issuing the notice shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(c) The clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars.

(d) If, following a hearing on the matter, the court determines that the claim upon which the notice to real property lender is based is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order declaring the notice to real property lender void if frivolous and made without reasonable cause, or reducing the amount stated in the notice if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the person who issued the notice. If the court determines that the claim underlying the notice to real property lender is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the issuer of the notice to be paid by the applicant.

(e) Proceedings under this subsection shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1992 c 126 § 13; 1991 c 281 § 22.]

***Reviser's note:** The reference to subsections (4) and (5) of this section appears to be erroneous. Engrossed Senate Bill No. 6441 changed the subsection numbers. Subsections (4) and (5) are now subsections (5) and (6).

60.04.226 Financial encumbrances—Priorities.

Except as otherwise provided in RCW 60.04.061 or 60.04.221, any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust, and other encumbrances which have not been recorded prior to the recording of the mortgage or deed of trust to the extent of all sums secured by the mortgage or deed of trust regardless of when the same are disbursed or whether the disbursements are obligatory. [1991 c 281 § 23.]

60.04.230 Construction projects—Notice to be posted by prime contractor—Penalty. (1) For any construction project costing more than five thousand dollars the prime contractor shall post in plain view for the duration of the construction project a legible notice at the construction job site containing the following:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner if the bond is for an amount not less than fifty percent of the total amount of the construction project.

(2) For any construction project which requires a building permit under local ordinance, compliance with the posting requirements of RCW 19.27.095 shall constitute compliance with this section. Otherwise, the information shall be posted as set forth in this section.

(3) Failure to comply with this section shall subject the prime contractor to a civil penalty of not more than five thousand dollars, payable to the county where the project is located. [1991 c 281 § 28; 1984 c 202 § 3.]

60.04.250 Informational materials on construction lien laws—Master documents. The department of labor and industries shall prepare master documents that provide informational material about construction lien laws and available safeguards against real property lien claims. The material shall include methods of protection against lien claims, including obtaining lien release documents, performance bonds, joint payee checks, the opportunity to require contractor disclosure of all potential lien claimants as a condition of payment, and lender supervision under *RCW 60.04.200 and 60.04.210. The material shall also include sources of further information, including the department of labor and industries and the office of the attorney general. [1990 c 81 § 1; 1988 c 270 § 1.]

***Reviser's note:** RCW 60.04.200 and 60.04.210 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Effective date—1988 c 270: "This act shall take effect July 1, 1989." [1988 c 270 § 4.]

60.04.255 Informational materials on construction lien laws—Copies—Liability. (1) Every real property lender shall provide a copy of the informational material described in RCW 60.04.250 to all persons obtaining loans, the proceeds of which are to be used for residential construction or residential repair or remodeling.

(2) Every contractor shall provide a copy of the informational material described in RCW 60.04.250 to customers required to receive contractor disclosure notice under RCW 18.27.114.

(3) No cause of action may lie against the state, a real property lender, or a contractor arising from the provisions of RCW 60.04.250 and this section.

(4) For the purpose of this section, "real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, or individual that makes loans secured by real property in this state. [1988 c 270 § 2.]

Effective date—1988 c 270: See note following RCW 60.04.250.

60.04.261 Availability of information. The prime contractor shall immediately supply the information listed in RCW 19.27.095(2) to any person who has contracted to

supply materials, equipment, or professional services or who is a subcontractor on the improvement, as soon as the identity and mailing address of such subcontractor, supplier, or professional is made known to the prime contractor either directly or through another subcontractor, supplier, or professional. [1991 c 281 § 24.]

60.04.900 Liberal construction—1991 c 281. RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions. [1991 c 281 § 25.]

60.04.901 Captions not law—1991 c 281. Section headings as used in this chapter do not constitute any part of the law. [1991 c 281 § 26.]

60.04.902 Effective date, application—1991 c 281. This act shall take effect June 1, 1992. Lien claims based on an improvement commenced by a potential lien claimant on or after June 1, 1992, shall be governed by the provisions of this act. [1992 c 126 § 14; 1991 c 281 § 32.]

60.04.903 Effective date—1992 c 126. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1992, except section 14 of this act which shall take effect immediately [March 31, 1992]. [1992 c 126 § 15.]

60.04.904 Application of chapter 281, Laws of 1991, to actions pending as of June 1, 1992—1993 c 357. All rights acquired and liabilities incurred under acts or parts of act repealed by chapter 281, Laws of 1991, are hereby preserved, and all actions pending as of June 1, 1992, shall proceed under the law as it existed at the time chapter 281, Laws of 1991, took effect. [1993 c 357 § 1.]

Retroactive application—1993 c 357: "This act is remedial in nature and shall be applied retroactively to June 1, 1992." [1993 c 357 § 2.]

Effective date—1993 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 357 § 3.]

**Chapter 60.08
CHATTEL LIENS**

Sections

- 60.08.010 Lien authorized.
- 60.08.020 Notice of lien—Contents—Form.
- 60.08.030 Priority of lien.
- 60.08.040 Enforcement of lien—Limitation of action.
- 60.08.050 Rank of lien—Personal judgment—Deficiency—Costs.
- 60.08.060 Filing notice of liens.

60.08.010 Lien authorized. Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner

thereof: PROVIDED, HOWEVER, That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien. [1917 c 68 § 1; 1909 c 166 § 1; 1905 c 72 § 1; RRS § 1154.]

60.08.020 Notice of lien—Contents—Form. In order to make such lien effectual the lien claimant shall, within ninety days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice, which notice shall state the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has performed labor or furnished material, the amount for which a lien is claimed and the date upon which such expenditure of labor or material was completed, which notice shall be signed by the claimant or someone on his behalf, and may be in substantially the following form:

CHATTEL LIEN NOTICE.

..... Claimant, }
against }
..... Owner. }

Notice is hereby given that has and claims a lien upon (here insert description of chattel), owned by for the sum of dollars, for and on account of labor, skill and material expended upon said which was completed upon the day of ... , 19. .
.....
Claimant.

[1983 c 33 § 1; 1917 c 68 § 2; 1905 c 72 § 2; RRS § 1155.]

60.08.030 Priority of lien. The liens created by this chapter are preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant has no notice. [1917 c 68 § 3; 1905 c 72 § 3; RRS § 1156.]

60.08.040 Enforcement of lien—Limitation of action. The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by judicial procedure or by summary procedure as set forth in chapter 60.10 RCW within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease. [1995 c 62 § 4; 1969 c 82 § 11; 1917 c 68 § 4; 1905 c 72 § 4; RRS § 1157.]

Secured transactions: Article 62A.9 RCW.

60.08.050 Rank of lien—Personal judgment—Deficiency—Costs. In every case originating in or removed to a court of competent jurisdiction, in which different liens

are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor;
- (2) All persons furnishing material;

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the action. [1917 c 68 § 5; RRS § 1157a.]

60.08.060 Filing notice of liens. Upon presentation of such lien notice to the auditor of any county, he shall file the same, and endorse thereon the time of the reception, the number thereof, and shall enter the same in a suitable book or file (but need not record the same). Such book or file shall have herewith an alphabetic index, in which the county auditor shall index such notice by noting the name of the owner, name of lien claimant, description of property, date of lien (which shall be the date upon which such expenditure of labor, skill or material was completed), date of filing and when released, the date of release. [1983 c 33 § 2; 1905 c 72 § 5; RRS § 1158.]

Chapter 60.10

PERSONAL PROPERTY LIENS— SUMMARY FORECLOSURE

Sections

60.10.010	Definitions.
60.10.020	Methods of foreclosure.
60.10.023	Judicial foreclosure of personal property liens.
60.10.027	Judicial foreclosure of a security interest.
60.10.030	Notice and sale—Priorities—Sale procedure—Surplus— Deficiency.
60.10.040	Rights and interest of purchaser for value.
60.10.050	Redemption.
60.10.060	Noncompliance with chapter—Rights of lien debtor.
60.10.070	"Commercially reasonable."

60.10.010 Definitions. As used in this chapter:

- (1) The term "lien debtor" means the person who is obligated, owes payment or other performance. Where the lien debtor and the owner of the collateral are not the same person, the term "lien debtor" means the owner of the collateral.
- (2) "Collateral" means the property subject to a statutory lien.
- (3) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest.

(4) "Secured party" has the same meaning as used in Article 9 of the Uniform Commercial Code (Title 62A RCW). [1969 c 82 § 2.]

Judicial foreclosure of personal property liens: RCW 60.10.023.

60.10.020 Methods of foreclosure. Any lien upon personal property, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by: (1) An action in the district court having jurisdiction in the district in which the property is situated in accordance with RCW 60.10.023, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 60.10.023, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in this chapter. [1995 c 62 § 5; 1991 c 33 § 3; 1969 c 82 § 3.]

Effective date—1991 c 33: See note following RCW 3.66.020.

60.10.023 Judicial foreclosure of personal property liens. The provisions of chapter 61.12 RCW, so far as they are applicable, govern in actions for the judicial foreclosure of liens on personal property excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed on the lien; and if there is a separate obligation secured by the lien, the lienholder may bring suit on the obligation. If the lienor proceeds on the obligation, the court shall, in addition to entering a decree foreclosing the lien, render judgment for the amount due on the obligation. The decree shall direct the sale of the lien property, and if there is a judgment on an obligation and the proceeds of the sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied.

Redemption rights and the rights and interest of a purchaser for value under this section are governed by RCW 60.10.040 and 60.10.050. [1995 c 62 § 1; 1969 c 82 § 1. Formerly RCW 61.12.162.]

60.10.027 Judicial foreclosure of a security interest. The provisions of chapter 61.12 RCW, so far as they are applicable, shall also be available to a secured party seeking to enforce a security interest by judicial proceedings as authorized by RCW 62A.9-501(1). In such a proceeding, the court shall enter a judgment foreclosing the security interest and shall render judgment for the amount due on the secured obligation. The decree shall direct the sale of property that is subject to the foreclosed security interest and is within the court's jurisdiction, and if the proceeds of sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on other property of the judgment debtor, not exempt from execution, for the sum remaining unsatisfied.

The rights and interest of a purchaser for value are governed by RCW 60.10.040 except as otherwise provided in Title 62A RCW. [1995 c 62 § 2.]

60.10.030 Notice and sale—Priorities—Sale procedure—Surplus—Deficiency. (1) A lien foreclosure authorized by RCW 60.10.020 may be summarily foreclosed by notice and sale as provided herein. The lien holder may sell, or otherwise dispose of the collateral in its then condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the lien holder need not comply with his demand.

(2) The lien holder must account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable which shall be construed as provided in RCW 60.10.070. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the lien debtor in this state or who is known by the lien holder to have a security interest in the collateral. The lien holder may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale. [1969 c 82 § 4.]

60.10.040 Rights and interest of purchaser for value. When a lien is foreclosed in accordance with the provisions of this chapter, the disposition transfers to a purchaser for value all of the lien debtor's rights therein, discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the lien holder fails to comply with the requirements of this chapter:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy

in collusion with the lien holder, other bidders or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1995 c 62 § 6; 1969 c 82 § 5.]

60.10.050 Redemption. At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under this chapter, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations to the holder that are secured by the collateral as well as the expenses reasonably incurred by the lien holder in holding and preparing the collateral for disposition, in arranging for the sale, and for reasonable attorneys' fees and legal expenses. [1995 c 62 § 7; 1969 c 82 § 6.]

60.10.060 Noncompliance with chapter—Rights of lien debtor. If it is established that the lien holder is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. The lien debtor has a right to recover in any event an amount not less than ten percent of the original lien claimed. [1969 c 82 § 7.]

60.10.070 "Commercially reasonable." As used in this chapter, "commercially reasonable" shall be construed in a manner consistent with the following:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the lien holder is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lien holder either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1969 c 82 § 8.]

Chapter 60.11

CROP LIENS

Sections

60.11.010	Definitions
60.11.020	Persons entitled to crop liens—Property subject to lien.
60.11.030	Attachment of liens—Attachment of proceeds.
60.11.040	Claim of lien—Filing—Contents—Duration.
60.11.050	Priorities of liens and security interests.
60.11.060	Foreclosure of crop lien.
60.11.070	Judicial foreclosure.
60.11.080	Summary foreclosure.

60.11.090	Rights and interest of purchaser for value.
60.11.100	Redemption.
60.11.110	Noncompliance with chapter—Rights of lien debtor.
60.11.120	"Commercially reasonable."
60.11.130	Limitation of action to foreclose—Costs.
60.11.140	Lien termination statement.
60.11.900	Savings—Liens created under prior law.
60.11.901	Section captions.
60.11.902	Severability—1986 c 242.
60.11.903	Effective date—1986 c 242.

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

(1) "Crop" means all products of the soil either growing or cropped, cut, or gathered which require annual planting, harvesting, or cultivating. A crop does not include vegetation produced by the powers of nature alone, nursery stock, or vegetation intended as a permanent enhancement of the land itself.

(2) "Handler" means a person: Who prepares an orchard crop for market for the account of, or as agent for, the producer of the crop, which preparation includes, but is not limited to, receiving, storing, packing, marketing, selling, or delivering the orchard crop; and who takes delivery of the crop from the producer of the crop or from another handler. "Handler" does not include a person who solely transports the crop from the producer to another person.

(3) "Landlord" means a person who leases or subleases to a tenant real property upon which crops are growing or will be grown.

(4) "Orchard crop" means cherries, peaches, nectarines, plums or prunes, pears, apricots, and apples.

(5) "Secured party" and "security interest" have the same meaning as used in the Uniform Commercial Code, Title 62A RCW.

(6) "Supplier" includes, but is not limited to, a person who furnishes seed, furnishes and/or applies commercial fertilizer, pesticide, fungicide, weed killer, or herbicide, including spraying and dusting, upon the land of the grower or landowner, or furnishes any work or labor upon the land of the grower or landowner including tilling, preparing for the growing of crops, sowing, planting, cultivating, cutting, digging, picking, pulling, or otherwise harvesting any crop grown thereon, or in gathering, securing, or housing any crop grown thereon, or in threshing any grain or hauling to any warehouse any crop or grain grown thereon.

(7) "Lien debtor" means the person who is obligated or owes payment or other performance. If the lien debtor and the owner of the collateral are not the same person, "lien debtor" means the owner of the collateral.

(8) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest. [1991 c 286 § 1; 1986 c 242 § 1.]

60.11.020 Persons entitled to crop liens—Property subject to lien. (1) A landlord whose lease or other agreement with the tenant provides for cash rental payment shall have a lien upon all crops grown upon the demised land in which the landlord has an interest for no more than one year's rent due or to become due within six months following harvest. A landlord with a crop share agreement

has an interest in the growing crop which shall not be encumbered by crop liens except as provided in subsections (2) and (3) of this section.

(2) A supplier shall have a lien upon all crops for which the supplies are used or applied to secure payment of the purchase price of the supplies and/or services performed: PROVIDED, That the landlord's interest in the crop shall only be subject to the lien for the amount obligated to be paid by the landlord if prior written consent of the landlord is obtained or if the landlord has agreed in writing with the tenant to pay or be responsible for a portion of the supplies and/or services provided by the lien holder.

(3) A handler shall have a lien on all orchard crops delivered by the lien debtor or another handler to the handler and on all proceeds of the orchard crops for: (a) All customary charges for the ordinary and necessary handling of the crop, including but not limited to charges for transporting, receiving, inspecting, materials and supplies furnished, washing, waxing, sorting, packing, storing, promoting, marketing, selling, advertising, insuring, or otherwise handling the lien debtor's crop; and (b) reasonable cooperative per unit retainages, and for all governmental or quasi-governmental assessments imposed by statute, ordinance, or government regulation. Charges shall not include direct or indirect advances or extensions of credit to [a] lien debtor. [1991 c 286 § 2; 1986 c 242 § 2.]

60.11.030 Attachment of liens—Attachment of proceeds. (1) Upon filing, the liens described in RCW 60.11.020 (1) and (2) shall attach to the crop for all sums then and thereafter due and owing the lien holder and shall continue in all identifiable cash proceeds of the crop.

(2) Upon the delivery of an orchard crop by the lien debtor, without the necessity of filing, the lien for charges as set forth in RCW 60.11.020(3) shall attach to the delivered crop and shall continue in both the crop and all proceeds of the crop. [1991 c 286 § 3; 1986 c 242 § 3.]

60.11.040 Claim of lien—Filing—Contents—Duration. (1) Except as provided in subsection (4) of this section with respect to the lien of a landlord, and except for the lien of a handler as provided in RCW 60.11.020(3), any lien holder must after the commencement of delivery of such supplies and/or of provision of such services, but before the completion of the harvest of the crops for which the lien is claimed, or in the case of a lien for furnishing work or labor within twenty days after the cessation of the work or labor for which the lien is claimed: (a) File a statement evidencing the lien with the department of licensing; and (b) if the lien holder is to be allowed costs, disbursements, and attorneys' fees, mail a copy of such statement to the last known address of the debtor by certified mail, return receipt requested, within ten days.

(2) The statement shall be in writing, signed by the claimant, and shall contain in substance the following information:

(a) The name and address of the claimant;

(b) The name and address of the debtor;

(c) The date of commencement of performance for which the lien is claimed;

(d) A description of the labor services, materials, or supplies furnished;

(e) A description of the crop and its location to be charged with the lien sufficient for identification; and

(f) The signature of the claimant.

(3) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers, including provisions for filing crop liens together with financing statements filed pursuant to RCW 62A.9-401 so that one request will reveal all filed crop liens and security interests.

(4) Any landlord claiming a lien under this chapter for rent shall file a statement evidencing the lien with the department of licensing. A lien for rent claimed by a landlord pursuant to this chapter shall be effective during the term of the lease for a period of up to five years. A landlord lien covering a lease term longer than five years may be refiled in accordance with RCW 60.11.050(5). A landlord who has a right to a share of the crop may place suppliers on notice by filing evidence of such interest in the same manner as provided for filing a landlord's lien. [1991 c 286 § 4; 1989 c 229 § 1; 1986 c 242 § 4.]

Severability—1989 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 229 § 2.]

60.11.050 Priorities of liens and security interests.

(1) Except as provided in subsections (2), (3), (4), and (5) of this section, conflicting liens and security interests shall rank in accordance with the time of filing.

(2) The lien created in RCW 60.11.020(2) in favor of any person who furnishes any work or labor upon the land of the grower or landowner shall be preferred and prior to any other lien or security interest upon the crops to which they attach including the liens described in subsections (3), (4), and (5) of this section.

(3) The lien created in RCW 60.11.020(3) in favor of handlers is preferred and prior to a lien or security interest described in subsection (4) or (5) of this section and to any other lien or security interest upon the crops to which they attach except the liens in favor of a person who furnishes work or labor upon the land of the grower or landlord. Whenever more than one handler holds a handler's lien created by RCW 60.11.020(3) in the same crop, unless the affected parties otherwise agree in writing, the later of the liens to attach has priority over all previously attached handlers' liens.

(4) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a later filed lien or security interest incurred to produce the crop to the extent that obligations secured by such earlier filed security interest or lien were not incurred to produce such crops.

(5) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a properly filed landlord's lien. A landlord's lien shall retain its priority if refiled within six months prior to its expiration. [1991 c 286 § 5; 1986 c 242 § 5.]

60.11.060 Foreclosure of crop lien. Any lien subject to this chapter, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW, may be foreclosed by: (1) An action in the district court having jurisdiction in the district in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in RCW 60.11.080. [1991 c 33 § 4; 1986 c 242 § 6.]

Effective date—1991 c 33: See note following RCW 3.66.020.

60.11.070 Judicial foreclosure. The lien holder may proceed upon his or her lien; and if there is a separate obligation in writing to pay the same, secured by the lien, he or she may bring suit upon such separate promise. When he or she proceeds on the promise, if there is a specific agreement therein contained, for the payment of a certain sum or there is a separate obligation for the sum in addition to a decree of sale of lien property, judgment shall be rendered for the amount due upon the promise or other instrument, the payment of which is thereby secured; the decree shall direct the sale of the lien property and if the proceeds of the sale are insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied. [1986 c 242 § 7.]

60.11.080 Summary foreclosure. (1) A lien may be summarily foreclosed by notice and sale as provided in this section. The lien holder may sell or otherwise dispose of the collateral in its existing condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like, and to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the lien holder need not comply with the demand.

(2) The lien holder shall account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but

every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline quickly in value or is of a type customarily sold on a recognized market, reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and to any other person who has a duly filed crop lien, or who has a security interest in the collateral and has duly filed a financing statement indexed in the name of the lien debtor in this state, or who is known by the lien holder to have a security interest or crop lien in the collateral. The lien holder may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the lien holder may buy at private sale. [1986 c 242 § 8.]

60.11.090 Rights and interest of purchaser for value. When a lien is foreclosed in accordance with RCW 60.11.060, the disposition transfers to a purchaser for value all of the lien debtor's right therein and discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the lien holder fails to comply with the requirements of this chapter or of any judicial proceedings under RCW 60.11.070:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the lien holder, other bidders, or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1986 c 242 § 9.]

60.11.100 Redemption. At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under RCW 60.11.060, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the lien holder in holding and preparing the collateral for disposition and in arranging for the sale and his or her reasonable attorneys' fees and legal expenses. [1986 c 242 § 10.]

60.11.110 Noncompliance with chapter—Rights of lien debtor. If the lien holder is not proceeding in accordance with the provisions of this chapter, disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. [1986 c 242 § 11.]

60.11.120 "Commercially reasonable." The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the lien holder is not in itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lien holder either sells the collateral in the usual manner

in any recognized market therefor or if he or she sells at the price current in such market at the time of the sale or if he or she has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he or she has sold in a commercially reasonable manner. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this does not mean that approval must be obtained in any case nor does it mean that any disposition not so approved is not commercially reasonable.

For purposes of this chapter, "commercially reasonable" shall be construed in a manner consistent with this section. [1986 c 242 § 12.]

60.11.130 Limitation of action to foreclose—Costs. Judicial foreclosure or summary procedure as provided in RCW 60.11.060 shall be brought within twenty-four calendar months after filing the claim for lien, except in the case of a landlord lien which shall be twenty-four calendar months from the date of default on the lease, and upon expiration of such time, the claimed lien shall expire. In a judicial foreclosure, the court shall allow reasonable attorneys' fees and disbursement for establishing a lien. [1986 c 242 § 13.]

60.11.140 Lien termination statement. (1) Whenever the total amount of the lien has been fully paid, the lien holder filing a lien shall, within fifteen days following receipt of full payment, file its lien termination statement with the department of licensing. Failure to file a lien termination statement by the lien holder or the assignee of the lien holder shall cause the lien holder or its assignee to be liable to the debtor for the attorneys' fees and costs incurred by the debtor to have the lien terminated together with damages incurred by the debtor due to the failure of the lien holder to terminate the lien.

(2) There shall be no charge by the department of licensing for entering the lien termination statement and indexing the same and returning a copy of the lien termination statement stamped as "filed" with the filing date thereon.

(3) The department of licensing may enter the lien termination statement on microfilm or other photographic record and destroy all originals of the lien and lien satisfaction filed with him or her. [1991 c 286 § 6; 1986 c 242 § 14.]

60.11.900 Savings—Liens created under prior law. Liens created prior to January 1, 1987, which are based on statutes repealed by *this act, shall remain in effect for the duration provided by the law in effect before January 1, 1987. The department of licensing shall notify persons requesting information for crop liens that, for this transition period, records of crop liens may exist at a county auditor's office as well as at the department of licensing. [1986 c 242 § 15.]

*Reviser's note: "this act" [1986 c 242] repealed chapters 60.12, 60.14, and 60.22 RCW.

60.11.901 Section captions. As used in this chapter, section captions constitute no part of the law. [1986 c 242 § 18.]

60.11.902 Severability—1986 c 242. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 242 § 19.]

60.11.903 Effective date—1986 c 242. This act shall take effect January 1, 1987. [1986 c 242 § 21.]

Chapter 60.13

PROCESSOR AND PREPARER LIENS FOR AGRICULTURAL PRODUCTS

Sections

60.13.010	Definitions.
60.13.020	Processor lien.
60.13.030	Preparer lien for grain, hay, or straw.
60.13.035	Notice of preparer lien for dairy products—Proof of lien.
60.13.040	Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures.
60.13.050	Priority of lien.
60.13.060	Duration of lien—Statement of discharge.
60.13.070	Foreclosure and enforcement of lien—Costs.

60.13.010 Definitions. As used in this chapter, the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock. When used in RCW 60.13.020, "agricultural product" means horticultural, viticultural, aquacultural, or berry products, hay and straw, milk and milk products, or turf and forage seed and applies only when such products are delivered to a processor or conditioner in an unprocessed form.

(2) "Conditioner," "consignor," "person," and "producer" have the meanings defined in RCW 20.01.010.

(3) "Delivers" means that a producer completes the performance of all contractual obligations with reference to the transfer of actual or constructive possession or control of an agricultural product to a processor or conditioner or preparer, regardless of whether the processor or conditioner or preparer takes physical possession.

(4) "Preparer" means a person engaged in the business of feeding livestock or preparing livestock products for market.

(5) "Processor" means any person, firm, company, or other organization that purchases agricultural products except milk and milk products from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale, or that purchases or markets milk from a dairy producer and is obligated to remit payment to such dairy producer directly.

(6) "Commercial fisherman" means a person licensed to fish commercially for or to take food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

(7) "Fish" means food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute. [1991 c 174 § 2; 1987 c 148 § 1; 1985 c 412 § 1.]

60.13.020 Processor lien. Starting on the date a producer delivers any agricultural product to a processor or conditioner, the producer has a first priority statutory lien, referred to as a "processor lien." A commercial fisherman who delivers fish to a processor also has a first priority statutory "processor lien" starting on the date the fisherman delivers fish to the processor. This processor lien shall continue until twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the fair market value of the products delivered. The processor lien attaches to the agricultural products or fish delivered, to the processor's or conditioner's inventory, and to the processor's or conditioner's accounts receivable. However, no processor lien may attach to agricultural products or fish delivered by a producer or commercial fisherman, or on the producer's or fisherman's behalf, to a processor which is organized and operated on a cooperative basis and of which the producer or fisherman is a member, nor may such lien attach to such processor's inventory or accounts receivable. [1987 c 148 § 2; 1985 c 412 § 2.]

60.13.030 Preparer lien for grain, hay, or straw. Starting on the date a producer delivers grain, hay, or straw to a preparer, the producer has a first priority statutory lien, referred to as a "preparer lien." This preparer lien shall continue twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the fair market value of the products delivered. The preparer lien attaches to the agricultural products delivered by the producer to the preparer, and to the preparer's accounts receivable. [1985 c 412 § 3.]

60.13.035 Notice of preparer lien for dairy products—Proof of lien. A person who controls or possesses amounts payable to the preparer of dairy products or the preparer's assigns, if the preparer or preparer's assigns is not a producer-handler, which are properly encumbered by a preparer's lien upon an account receivable shall not be obligated to pay a producer amounts to which the producer's preparer lien has attached until that person receives written notice of such lien, nor shall that person be liable to the producer for any amounts paid out prior to receipt of said notice. The notice required herein shall contain the information described in RCW 60.13.040(2). If requested by the person responsible for payment of such amounts, the producer must seasonably furnish reasonable proof that the preparer lien continues to exist and unless such proof is so furnished, that person has no obligation to pay the producer. A preparer of dairy products shall provide the name of the purchaser or marketing agent of the products to the producer upon request.

Failure to furnish the written notice as provided in this section shall not affect the status of the lien established under this chapter in regard to the relationship with other creditors. [1986 c 178 § 15.]

60.13.040 Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures.

(1) A producer or commercial fisherman claiming a processor or preparer lien may file a statement evidencing the lien with the department of licensing after payment from the processor, conditioner, or preparer to the producer or fisherman is due and remains unpaid. For purposes of this subsection and RCW 60.13.050, payment is due on the date specified in the contract, or if not specified, then within thirty days from time of delivery.

(2) The statement shall be in writing, verified by the producer or fisherman, and shall contain in substance the following information:

(a) A true statement of the amount demanded after deducting all credits and offsets;

(b) The name of the processor, conditioner, or preparer who received the agricultural product or fish to be charged with the lien;

(c) A description sufficient to identify the agricultural product or fish to be charged with the lien;

(d) A statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice evidencing the lien;

(e) The date on which payment was due for the agricultural product or fish to be charged with the lien; and

(f) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers. [1987 c 189 § 7; 1987 c 148 § 3; 1985 c 412 § 4.]

Reviser's note: This section was amended by 1987 c 148 § 3 and by 1987 c 189 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

60.13.050 Priority of lien. (1)(a) If a statement is filed pursuant to RCW 60.13.040 within twenty days of the date upon which payment from the processor, conditioner, or preparer to the producer or commercial fisherman is due and remains unpaid, the processor or preparer lien evidenced by the statement continues its priority over all other liens or security interests upon agricultural products or fish, inventory, and accounts receivable, except as provided in (b) of this subsection. Such priority is without regard to whether the other liens or security interests attached before or after the date on which the processor or preparer lien attached.

(b) The processor or preparer lien shall be subordinate to liens for taxes or labor perfected before filing of the processor or preparer lien.

(2) If the statement provided for in RCW 60.13.040 is not filed within twenty days of the date payment is due and remains unpaid, the processor or preparer lien shall thereupon become subordinate to:

(a) A lien that has attached to the agricultural product or fish, inventory, or accounts receivable before the date on which the processor or preparer lien attaches; and

(b) A perfected security interest in the agricultural product or fish, inventory, or accounts receivable. [1987 c 148 § 4; 1985 c 412 § 5.]

Priority of preparer and processor liens: RCW 62A.9-310.

60.13.060 Duration of lien—Statement of discharge.

(1) The processor lien shall terminate six months after, and the preparer lien shall terminate fifty days after, the later of the date of attachment or filing, unless a suit to foreclose the lien has been filed before that time as provided in RCW 60.13.070.

(2) If a statement has been filed as provided in RCW 60.13.040 and the producer or commercial fisherman has received payment for the obligation secured by the lien, the producer or fisherman shall promptly file with the department of licensing a statement declaring that full payment has been received and that the lien is discharged. If, after payment, the producer or fisherman fails to file such statement of discharge within ten days following a request to do so, the producer or fisherman shall be liable to the processor, conditioner, or preparer in the sum of one hundred dollars plus actual damages caused by the failure. [1987 c 148 § 5; 1985 c 412 § 6.]

60.13.070 Foreclosure and enforcement of lien—

Costs. (1) The processor or preparer liens may be foreclosed and enforced by civil action in superior court.

(2) In all suits to enforce processor or preparer liens, the court shall, upon entering judgment, allow to the prevailing party as a part of the costs, all moneys paid for the filing and recording of the lien and reasonable attorney fees. [1985 c 412 § 7.]

Chapter 60.16

**LABOR LIENS ON ORCHARDS
AND ORCHARD LANDS**

Sections

- 60.16.010 Liens authorized.
60.16.020 Notice of lien—Filing—Contents—Foreclosure.
60.16.030 Limitation of action to foreclose—Costs.

60.16.010 Liens authorized. Any person or corporation who shall do or cause to be done any labor upon any orchard or orchard lands, in pruning, spraying, cultivating and caring for the same, at the request of the owner thereof, or his agent, shall have a lien upon such orchard and orchard lands for such work and labor so performed. [1917 c 110 § 1; RRS § 1131-1.]

60.16.020 Notice of lien—Filing—Contents—Foreclosure. Any person or corporation claiming the benefit of this chapter, must within forty days after the close of such work or labor for each season during which such work and labor is done, file for record with the county auditor of the county in which said work and labor was performed and in which said land or part thereof is situated, a claim of lien which shall be in substance in accordance with the provisions of *RCW 60.04.060, so far as the same is applicable, which said claim of lien shall be verified as in

said section provided, and such lien may be enforced in a civil action in the same manner as near as may be, as provided in *RCW 60.04.120. [1917 c 110 § 2; RRS § 1131-2.]

*Reviser's note: RCW 60.04.060 and 60.04.120 were repealed by 1991 c 281 § 31, effective April 1, 1992.

60.16.030 Limitation of action to foreclose—Costs.

Any action to foreclose such claim of lien shall be brought within eight calendar months after the filing of such claim for lien as provided in RCW 60.16.020 and in any such action brought to enforce such lien, the court shall allow as part of the costs the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1917 c 110 § 3; RRS § 1131-3.]

Chapter 60.24

LIEN FOR LABOR AND SERVICES ON TIMBER AND LUMBER

Sections

60.24.020	Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber.
60.24.030	Lien on lumber—"Lumber" defined.
60.24.033	Lien on real property for labor or services on timber and lumber.
60.24.035	Lien for stumpage.
60.24.038	Priority of lien.
60.24.040	Period covered by labor liens.
60.24.070	Period covered by stumpage lien.
60.24.075	Claims—Contents—Form.
60.24.080	Filing claim for stumpage lien.
60.24.100	Recording claims—Fees.
60.24.110	Limitation of action.
60.24.120	Venue—Procedure.
60.24.130	Sheriff as receiver—Deposit to recover possession—Costs.
60.24.140	Pleadings by defendant—Amendments—Hearing.
60.24.150	Enforcement against all or part of property.
60.24.160	Errors in claim, effect of.
60.24.170	Purchase of property subject to lien—Presumption of notice.
60.24.180	Joinder—Costs.
60.24.190	Judgment—Sale—Disposition of proceeds.
60.24.195	Sale of property subject to lien—When.
60.24.200	Damages for eloigning, injuring, destroying or removing marks, etc.—Recovery.

Lien under this chapter extends to real property on which labor and services are performed: RCW 60.24.033.

60.24.020 Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber. Every person performing labor upon or who shall assist in obtaining or securing saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any tugboat or towboat, which shall tow or assist in towing, from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any team or any logging engine, which shall haul or assist in hauling from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any logging or other railroad over which saw logs, spars, piles, cord wood, shingle bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving, the

particular saw logs, spars, cord wood, shingle bolts, or other timber in said claim of lien described whether such work, labor or services was done, rendered or performed at the instance of the owner of the same or his agent. Scalers, and bull cooks, and cooks, flunkies and waiters in lumber camps, shall be regarded as persons who assist in obtaining or securing the timber herein mentioned. [1923 c 10 § 1; 1907 c 9 § 1; 1895 c 88 § 1; 1893 c 132 § 1; RRS § 1162. Prior: Code 1881 § 1941; 1879 p 100 § 2; 1877 p 217 § 3; 1860 p 340 § 1.]

60.24.030 Lien on lumber—"Lumber" defined.

Every person performing work or labor or assisting in manufacturing saw logs and other timber into lumber and shingles, has a lien upon such lumber while the same remains at the mill where it was manufactured, or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term lumber, as used in this chapter, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from saw logs or other timber. [1893 c 132 § 2; 1893 c 10 § 1; RRS § 1163. Prior: Code 1881 § 1942; 1877 p 217 § 4. Formerly RCW 60.24.010, part.]

60.24.033 Lien on real property for labor or services on timber and lumber. The lot tract, parcel of land, or any other type of real property or real property improvements upon which the type of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035 are to be performed, or so much property thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of lien, shall also be subject to the lien to the extent of its interest of the persons who in their own behalf, or through any of their agents, caused any of the types of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035. [1986 c 179 § 1. Formerly RCW 60.04.045.]

60.24.035 Lien for stumpage. Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [1893 c 132 § 3; RRS § 1164. Prior: Code 1881 § 1943; 1877 p 217 § 5. Formerly RCW 60.24.060.]

60.24.038 Priority of lien. The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any saw logs, spars, piles or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this chapter those for work and labor shall be preferred: PROVIDED, That as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claim or claims for work or labor done or performed on the identical logs proceeded against to the extent

that said logs can be identified, shall be preferred as against the general claim of lien for work and labor recognized and provided for in this chapter. [1893 c 132 § 4; RRS § 1165. Prior: Code 1881 § 1944; 1877 p 217 § 6. Formerly RCW 60.24.090.]

60.24.040 Period covered by labor liens. The person rendering the service of [or] doing the work or labor named in RCW 60.24.020 and 60.24.030 is only entitled to the liens as provided herein for services, work or labor for the period of eight calendar months, or any part thereof next preceding the filing of the claim, as provided in *section 8 of this act. [1893 c 132 § 5; RRS § 1166. Prior: Code 1881 § 1945; 1877 p 217 § 7.]

*Reviser's note: "section 8 of this act" is codified as RCW 60.24.080. Section 7 (codified as RCW 60.24.075) was probably intended.

60.24.070 Period covered by stumpage lien. The person granting the privilege mentioned in RCW 60.24.035 is only entitled to the lien as provided therein for saw logs, spars, piles and other timber cut during the eight months next preceding the filing of the claim, as herein provided in RCW 60.24.075. [1893 c 132 § 6; RRS § 1167. Prior: Code 1881 § 1946; 1877 p 217 § 8.]

60.24.075 Claims—Contents—Form. Every person, within sixty days after the close of the rendition of the services, or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw logs, spars, piles, and other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

..... Claimant, vs.

Notice is hereby given that of county, state of Washington, claims a lien upon a of, being about in quantity, which were cut or manufactured in county, state of Washington, or marked thus, and are now lying in, for labor performed upon and assistance rendered in said; that the name of the owner or reputed owner is; that employed said to perform such labor and render such assistance upon the following terms and conditions, to wit:

The said agreed to pay the said for such labor and assistance; that said contract has been faithfully performed and fully complied with on the part of said, who performed labor upon and assisted in said for the period of; that said

labor and assistance were so performed and rendered upon said between the day of . . . and the ... day of; and the rendition of said service was closed on the day of, and sixty days have not elapsed since that time; that the amount of claimant's demand for said service is; that no part thereof has been paid except, and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of, in which amount he claims a lien upon said The said also claims a lien on all said now owned by said of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles, or other timber, lumber, or shingles herein described.

State of Washington, county of ss. being first duly sworn, on oath says that he is named in the foregoing claim, has heard the same read, knows the contents thereof, and believes the same to be true.

.....
Subscribed and sworn to before me this . . . day of

.....
[1896 c 179 § 2; 1893 c 132 § 7; RRS § 1168. Prior: Code 1881 § 1947; 1879 p 100 § 4; 1877 p 217 § 9. Formerly RCW 60.24.050.]

60.24.080 Filing claim for stumpage lien. Every person mentioned in RCW 60.24.035 claiming the benefit thereof must file for record with the county auditor of the county in which such saw logs, spars, piles or other timber were cut, a claim in substance the same as provided in RCW 60.24.075, and verified as therein provided. [1893 c 132 § 8; RRS § 1169. Prior: Code 1881 § 1948; 1877 p 218 § 10.]

60.24.100 Recording claims—Fees. The county auditor must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments. [1893 c 132 § 9; RRS § 1170. Prior: Code 1881 § 1949; 1877 p 218 § 11.]

60.24.110 Limitation of action. No lien provided for in this chapter binds any saw logs, spars, piles or other timber, or lumber and shingles, for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same: PROVIDED, HOWEVER, That in case such civil action so commenced should for any cause other than the merits, be nonsuited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired, to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated. [1893 c 132 § 10; RRS § 1171. Prior: Code 1881 § 1950; 1879 p 100 § 5; 1877 p 218 § 12.]

60.24.120 Venue—Procedure. The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it; except as hereinafter otherwise provided. [1893 c 132 § 11; RRS § 1172. Prior: Code 1881 § 1951; 1877 p 218 § 13.]

60.24.130 Sheriff as receiver—Deposit to recover possession—Costs. The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court upon a showing made shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity: PROVIDED, That at any time when any property is in the custody of such sheriff under the provisions of this chapter, and any person claiming any interest therein, may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to the claim sued upon, together with one hundred dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: PROVIDED, That in no action brought under the provisions of this chapter shall costs be allowed to lien holders unless a demand has been made for payment of his lien claim before commencement of suit, unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. [1899 c 90 § 1; 1893 c 132 § 12; RRS § 1173.]

60.24.140 Pleadings by defendant—Amendments—Hearing. If the defendant or defendants appear in a suit to enforce any lien provided by this chapter he or they shall make their answer on the merits of the complaint, and any motion or demurrer against the said complaint must be filed with the answer; and no motion shall be allowed to make complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more certain and definite by facts which will appear necessarily in the testimony; but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily as possible, and amendments of the pleadings, if necessary, shall be liberally allowed. [1893 c 132 § 13; RRS § 1174.]

60.24.150 Enforcement against all or part of property. Any person who shall bring a civil action to enforce the lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw logs,

spars, piles or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining, or which he has cut on his timber land during the eight months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, piles or other timber, or in manufacturing said lumber or shingles during the whole or any part of the eight months mentioned in *section seven (7) of this act, or for timber cut during the whole or any part of the eight months above mentioned. And where proceedings are commenced against any lot of saw logs, spars, piles or other timber or lumber or shingles as herein provided, and some of the lienors claim liens against the specific logs, spars, piles or other timber or lumber or shingles proceeded against, and others against the same generally, to secure their claims for work and labor, the priority of the liens shall be determined as hereinbefore provided. [1893 c 132 § 14; RRS § 1175. Prior: Code 1881 § 1952; 1877 p 218 § 14.]

*Reviser's note: "section seven (7) of this act" is codified as RCW 60.24.075. Section 5 (codified as RCW 60.24.040) was probably intended.

60.24.160 Errors in claim, effect of. No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets or of the balance due was made with intent to defraud, or the court shall find that an innocent third party without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry, in any manner. [1893 c 132 § 15; RRS § 1176.]

60.24.170 Purchase of property subject to lien—Presumption of notice. It shall be conclusively presumed by the court that a party purchasing the property liened upon within thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property liened upon, unless it shall appear that he has paid full value for the said property, and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims as are entitled to liens upon the said property under the provisions of this chapter, according to the priorities herein established. [1893 c 132 § 16; RRS § 1177.]

60.24.180 Joinder—Costs. Any number of persons claiming liens under this chapter may join in the affidavit in RCW 60.24.075 provided, and may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [1901 c 23 § 1; 1893 c 132 § 17; RRS § 1178. Prior: Code 1881 § 1691; 1877 p 219 § 15.]

60.24.190 Judgment—Sale—Disposition of proceeds. In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the

court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this chapter pro rata in its class according to the amount of such judgment. [1893 c 132 § 18; RRS § 1179. Prior: Code 1881 § 1954; 1877 p 219 § 16. FORMER PART OF SECTION: 1893 c 132 § 19; RRS § 1180 now codified as RCW 60.24.195.]

Sale of property on execution: Chapter 6.21 RCW.

60.24.195 Sale of property subject to lien—When.

The court or judge may order any property subject to a lien as in this chapter provided to be sold by the sheriff as personal property is sold on execution either before or at the time judgment is rendered, as provided in RCW 60.24.190, and the proceeds of such sale must be paid into court to be applied as in RCW 60.24.190 directed. [1893 c 132 § 19; RRS § 1180. Prior: Code 1881 § 1955; 1877 p 219 § 17. Formerly RCW 60.24.190, part.]

Sale of property on execution: Chapter 6.21 RCW.

60.24.200 Damages for eloining, injuring, destroying or removing marks, etc.—Recovery. Any person who shall eloin, injure or destroy, or who shall render difficult, uncertain or impossible of identification any saw logs, spars, piles, shingles or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien, and it being shown to the court in the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person, provided he be a party to such action, or the damages may be recovered by a civil action against such person. [1893 c 132 § 20; RRS § 1181. Prior: Code 1881 § 1956; 1877 p 219 § 18.]

Chapter 60.28

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

- 60.28.010 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration.
- 60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—Definitions.
- 60.28.015 Recovery from retained percentage—Written notice to contractor of materials furnished.
- 60.28.020 Excess over lien claims to contractor.
- 60.28.021 Excess over lien claims paid to contractor.
- 60.28.030 Foreclosure of lien—Limitation of action—Release of funds.
- 60.28.040 Tax liens—Priority of liens.
- 60.28.050 Duties of disbursing officer upon final acceptance of contract.
- 60.28.051 Duties of disbursing officer upon completion of contract.

- 60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue.
- 60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination.
- 60.28.900 Severability—1955 c 236.

Contractor's bond for payment of mechanics, laborers, materialmen, etc., on public works: Chapter 39.08 RCW.

60.28.010 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration. (1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: PROVIDED, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: PROVIDED FURTHER, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: PROVIDED, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or

until agreed to by both parties: PROVIDED, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each

ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: PROVIDED, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims.

(7) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations shall not be subject to subsections (1) through (6) of this section. [1986 c 181 § 6; 1984 c 146 § 1; 1982 c 170 § 1; 1981 c 260 § 14. Prior: 1977 ex.s. c 205 § 1; 1977 ex.s. c 166 § 5; 1975 1st ex.s. c 104 § 1; 1970 ex.s. c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

Application—1992 c 233: See RCW 39.04.901.

Severability—1977 ex.s. c 166: See note following RCW 39.08.030.

60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—Definitions. (1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the

cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the materialmen and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or materialperson who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services. [1994 c 101 § 1; 1992 c 223 § 2.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.015 Recovery from retained percentage—Written notice to contractor of materials furnished. Every person, firm, or corporation furnishing materials, supplies, or equipment to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall give to the contractor of the work a notice in writing, which notice shall cover the material, supplies, or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies, or equipment furnished or leased, stating in substance and effect that such person, firm,

or corporation is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the subcontractor ordering the same, and that a lien against the retained percentage may be claimed for all materials and supplies, or equipment furnished by such person, firm, or corporation for use thereon, which notice shall be given by (1) mailing the same by registered or certified mail in an envelope addressed to the contractor, or (2) by serving the same personally upon the contractor or the contractor's representative and obtaining evidence of such service in the form of a receipt or other acknowledgement signed by the contractor or the contractor's representative, and no suit or action shall be maintained in any court against the retained percentage to recover for such material, supplies, or equipment or any part thereof unless the provisions of this section have been complied with. [1986 c 314 § 5.]

60.28.020 Excess over lien claims to contractor.

After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [1975 1st ex.s. c 104 § 2; 1970 ex.s. c 38 § 2; 1967 ex.s. c 26 § 23; 1955 c 236 § 2; 1921 c 166 § 2; RRS § 10321.]

Application—1992 c 223: See RCW 39.04.901.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.021 Excess over lien claims paid to contractor. After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees

incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [1992 c 223 § 3.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.030 Foreclosure of lien—Limitation of action—Release of funds. Any person, firm, or corporation filing a claim against the reserve fund shall have four months from the time of the filing thereof in which to bring an action to foreclose the lien. The lien shall be enforced by action in the superior court of the county where filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien against it: **PROVIDED,** That the public body shall not be required to make any detailed answer to any complaint or other pleading but need only certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing respectively the dates of filing, the names of claimants, and amounts claimed. Such certification shall operate to arrest payment of so much of the funds retained as is required to discharge the taxes certified due or to become due and the claims filed in accordance with this chapter. In any action brought to enforce the lien, the claimant, if he prevails, is entitled to recover, in addition to all other costs, attorney fees in such sum as the court finds reasonable. If a claimant fails to bring action to foreclose his lien within the four months period, the reserve fund shall be discharged from the lien of his claim and the funds shall be paid to the contractor. The four months limitation shall not, however, be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure is sought against the fund. [1979 ex.s. c 38 § 1; 1955 c 236 § 3; 1927 c 241 § 1; 1921 c 166 § 3; RRS § 10322.]

60.28.040 Tax liens—Priority of liens. The amount of all taxes, increases and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, except that the employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens. The amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid. [1985 c 80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Severability—Effective dates—1971 ex.s. c 299: See notes following RCW 82.04.050.

60.28.050 Duties of disbursing officer upon final acceptance of contract. Upon final acceptance of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [1982 c 170 § 2; 1970 ex.s. c 38 § 3; 1967 ex.s. c 26 § 24; 1955 c 236 § 5. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Application—1992 c 223: See RCW 39.04.901.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.051 Duties of disbursing officer upon completion of contract. Upon completion of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [1992 c 223 § 4.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue. If within thirty days after receipt of notice by the department of revenue of the completion of the contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the department of revenue may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect to the contract and may request payment thereof to the department of revenue in accordance with the priority provided by this chapter. The disbursing officer shall within ten days after receipt of such certificate and request pay to the department of revenue the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract, and, after payment of all claims which by statute are a lien upon the

retained percentage withheld by the disbursing officer, shall pay to the department of revenue the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the department of revenue for the balance of all taxes, increases or penalties shown to be due by the certificate of the department of revenue. If the contractor owes no taxes imposed pursuant to Title 82 RCW, the department of revenue shall so certify to the disbursing officer. [1967 ex.s. c 26 § 25; 1955 c 236 § 6. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination. (1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract as provided by *RCW 60.28.010(3), the appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and subcontracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973. [1982 c 170 § 3; 1973 1st ex.s. c 62 § 3.]

***Reviser's note:** RCW 60.28.010(3) was renumbered as RCW 60.28.010(5) by 1982 c 170 § 1.

Severability—1973 1st ex.s. c 62: See note following RCW 39.04.120.

Change orders due to environmental protection requirements, costs: RCW 39.04.120.

60.28.900 Severability—1955 c 236. If any section, provision or part of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional. [1955 c 236 § 8.]

Chapter 60.32

LABOR LIENS ON FRANCHISES, EARNINGS, AND PROPERTY OF CERTAIN COMPANIES

Sections

- 60.32.010 Liens authorized.
 60.32.020 Notice of lien—Contents—Filing and serving.
 60.32.030 Manner of serving notice.
 60.32.040 Manner of enforcing liens.
 60.32.050 Receiver or assignee to pay claims first.

60.32.010 Liens authorized. Every person performing labor for any person, company or corporation, in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said person, company or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien. [1897 c 43 § 1; RRS § 1149.]

60.32.020 Notice of lien—Contents—Filing and serving. No person shall be entitled to the lien given by RCW 60.32.010, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the person or persons employing claimant, if known, with the statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record.

Any number of claimants may join in the same notice for the purpose of filing and enforcing their liens, but the amount claimed by each claimant shall be separately stated. [1977 ex.s. c 176 § 1; 1897 c 43 § 2; RRS § 1150.]

60.32.030 Manner of serving notice. Service of notice, as herein required, may be made in the same manner as summons in civil actions. [1897 c 43 § 3; RRS § 1151.]

Service of summons in civil actions: RCW 4.28.080.

60.32.040 Manner of enforcing liens. Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed. [1897 c 43 § 4; RRS § 1152.]

60.32.050 Receiver or assignee to pay claims first. Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed

under this chapter, before the payment of any other debts or claims, other than operating expenses. [1897 c 43 § 5; RRS § 1153.]

Chapter 60.34

LIEN OF RESTAURANT, HOTEL, TAVERN, ETC., EMPLOYEES

Sections

- 60.34.010 Liens authorized.
 60.34.020 Notice of lien—Contents—Filing and serving.
 60.34.030 Manner of serving notice.
 60.34.040 Manner of enforcing liens—Costs.
 60.34.050 Priority of lien.

60.34.010 Liens authorized. Every person performing labor in the operation of any restaurant, hotel, tavern, or other place of business engaged in the selling of prepared foods or drinks, or any hotel service employee, shall have a lien on the earnings and on all the property of his employer used in the operation of said business to the extent of the moneys due him for labor performed within three months next preceding the filing of his claim therefor. [1953 c 205 § 1.]

60.34.020 Notice of lien—Contents—Filing and serving. The lien claimant shall within thirty days after he has ceased to perform such labor, file for record with the auditor of the county in which the labor was performed a notice of claim, containing a statement of his demand, the name of the employer and the name of the person employing him, if known, with a statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve or mail a copy thereof to said employer within said period. [1953 c 205 § 2.]

60.34.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1953 c 205 § 3.]

Service of summons in civil actions: RCW 4.28.080.

60.34.040 Manner of enforcing liens—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed, when said lien is upon real property, or in the same manner as provided in chapter 60.10 RCW when the lien is upon personal property. The court may allow as part of the costs of the action the money paid for filing or recording the claim and a reasonable attorney fee. [1995 c 62 § 8; 1969 c 82 § 12; 1959 c 173 § 1; 1953 c 205 § 4.]

60.34.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the commencement of the labor and is also preferred to any encumbrance which may have attached previously to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1953 c 205 § 5.]

Chapter 60.36

LIEN ON VESSELS AND EQUIPMENT

Sections

60.36.010	Liens created.
60.36.020	Actions to enforce liens.
60.36.030	Liens for handling cargo.
60.36.040	Liens for handling cargo—Priority.
60.36.050	Liens for handling cargo—Foreclosure.
60.36.060	Lien for breach of contract for towing, dunnaging, stevedoring, etc.

60.36.010 Liens created. All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

(1) For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

(2) For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020.

(3) For their wharfage and anchorage within this state.

(4) For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

(5) For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued. [1901 c 24 § 1; Code 1881 § 1939; 1877 p 216 § 1; RRS § 1182. Prior: 1858 p 29 § 1.]

Lien of pilot for pilotage compensation: RCW 88.16.140.

60.36.020 Actions to enforce liens. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW 60.10.023. [1995 c 62 § 9; 1969 c 82 § 19; Code 1881 § 1940; 1877 p 216 § 2; RRS § 1183.]

60.36.030 Liens for handling cargo. All steamers, vessels and boats, their tackle, apparel and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others: PROVIDED, That such services must have been so performed in and about and be connected with the loading, unloading, dunnaging or stowing of said cargo. [1901 c 75 § 1; RRS § 1184.]

60.36.040 Liens for handling cargo—Priority. Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in RCW 60.36.030 shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in RCW 60.36.010(1), (2) and (3), to which said demands the lien hereby provided shall be subordinate: PROVIDED, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others. [1901 c 75 § 2; RRS § 1185.]

60.36.050 Liens for handling cargo—Foreclosure. The liens hereby created may be foreclosed as provided in RCW 60.10.023. [1995 c 62 § 10; 1969 c 82 § 13; 1901 c 75 § 3; RRS § 1186.]

60.36.060 Lien for breach of contract for towing, dunnaging, stevedoring, etc. Whenever the owner, charterer, or any person or corporation operating, managing or controlling any steamship, vessel or boat shall wilfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed. [1903 c 149 § 1; RRS § 1187.]

Chapter 60.40

LIEN FOR ATTORNEY'S FEES

Sections

60.40.010	Lien created.
60.40.020	Proceedings to compel delivery of money or papers.
60.40.030	Procedure when lien is claimed.

Rules of court: *Return of files of disbarred or suspended attorney—RLD 8.1.*

60.40.010 Lien created. An attorney has a lien for his compensation, whether specially agreed upon or implied, as hereinafter provided: (1) Upon the papers of his client, which have come into his possession in the course of his professional employment; (2) upon money in his hands belonging to his client; (3) upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party; (4) upon a judgment to the extent of the value of any services performed by him in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice. [Code 1881 § 3286; 1863 p 406 § 12; RRS § 136.]

60.40.020 Proceedings to compel delivery of money or papers. When an attorney refuses to deliver over money or papers, to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt. [Code 1881 § 3287; 1863 p 406 § 13; RRS § 137.]

60.40.030 Procedure when lien is claimed. If, however, the attorney claim a lien, upon the money or papers, under the provisions of *this chapter, the court or judge may: (1) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3) to refer it, and upon the report, determine the same as in other cases. [Code 1881 § 3288; 1863 p 406 § 14; RRS § 138.]

***Reviser's note:** "this chapter" appeared in section 3288, chapter 250 of the Code of 1881, the lien sections of which are codified as chapter 60.40 RCW.

Chapter 60.42 COMMERCIAL REAL ESTATE BROKER LIEN ACT

Sections	
60.42.005	Definitions.
60.42.010	Lien upon personal property—Effective date—Notice of claim of lien—Waiver of lien rights—Court costs, attorneys' fees, and statutory interest.
60.42.020	Disputed claim—Order to show cause—Hearing.
60.42.030	Lien on net rental proceeds—Order to show cause—Hearing.
60.42.040	Priority of lien claims.
60.42.050	Deposit made pending resolution of amounts due—Recording of receipt—Release of notice of claim of lien.
60.42.060	County auditor or recorder—Duties—Fees.
60.42.070	Delivery of notice of claim of lien—Form—Time effective—Address.

60.42.900 Application.
60.42.901 Short title.

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

(1) "Commercial real estate" means a fee title interest or possessory estate in real property located in this state except an interest in real property which is (a) improved with one single-family residential unit or one multifamily structure with four or less residential units, or (b) unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate, or (c) classified as farm and agricultural land or timber land for assessment purposes pursuant to chapter 84.34 RCW, or (d) improved with single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis. Real estate will be considered commercial real estate if the commission agreement so provides, or if it meets the definition contained in this section on the date of the disposition.

(2) "Commission agreement" means a written instrument which meets the requirements of RCW 19.36.010 signed by the owner, or by a party duly authorized to sign on behalf of the owner, of commercial real estate, pursuant to which the owner agrees to pay a broker a real estate commission upon either the disposition or lease of commercial real estate or upon entering into an agreement for disposition or lease of commercial real estate. When a broker and owner execute multiple versions of a commission agreement regarding the same disposition of commercial real estate, the final written version of the commission agreement, which incorporates the final agreement between the broker and the owner, constitutes the "commission agreement" and shall be used to determine the amount of the lien created by this chapter.

(3) "Days" means calendar days. However, if a period ends on a day other than a business day, then the last day shall be the next business day.

(4) "Disposition" means a voluntary transfer or conveyance of commercial real estate.

(5) "Escrow closing agent" means the person or entity who receives documents and funds for recording and disbursement in completing a transaction for the disposition of commercial real estate.

(6) "Lease" means a written agreement which gives rise to a relationship of landlord and tenant, affecting commercial real estate, such that the holder of a fee simple interest or possessory estate in commercial real estate permits another to possess the commercial real estate for a period, and which meets the requirements of RCW 19.36.010, if applicable.

(7) "Net rental proceeds" means the base rent paid by the tenant under a lease, less any amounts currently due under the terms of liens which have priority over the lien created under this chapter. Base rent is the rent so designated in a lease as base rent, or a similar term, for the possession and use of the commercial real estate, but does not include separate payments made by tenants for insurance, taxes, utilities, or other expenses.

(8) "Owner" means a person or entity which is vested in record fee title or a possessory estate in commercial real estate.

(9)(a) "Owner's net proceeds" means the gross sales proceeds from the disposition of the commercial real estate described in a notice of claim of lien against proceeds pursuant to this chapter, less the following: (i) Amounts necessary to pay all encumbrances and liens which have priority over the lien created by this chapter other than those permitted to remain by the buyer; (ii) owner's closing costs, such as real estate excise tax, title insurance premiums, real estate tax and assessment prorations, and escrow fees payable by the owner pursuant to an agreement with the buyer; and (iii) amounts held by a third party for use by the owner to complete an exchange of real estate which is deferred from federal income tax under section 1031 of the internal revenue code of 1986, as amended.

(b) "Owner's net proceeds" shall include any gross sales proceeds which are held by a third party for purposes of completing an exchange of real estate which is deferred from federal income tax under section 1031 of the internal revenue code of 1986, as amended, but are subsequently not used for that purpose. "Owner's net proceeds" are personal property, upon which the lien created by this chapter attaches.

(10) "Real estate broker" or "broker" means the same as defined in RCW 18.85.010.

(11) "Real property" means one or more parcels or tracts of land, including appurtenances or improvements. [1997 c 315 § 1.]

60.42.010 Lien upon personal property—Effective date—Notice of claim of lien—Waiver of lien rights—Court costs, attorneys' fees, and statutory interest. (1) The lien created under this chapter is a lien upon personal property, not upon real property.

(2) A broker has a lien upon the owner's net proceeds from the disposition of commercial real estate and a lien upon the net rental proceeds from the lease of commercial real estate in the amount which the owner has agreed to pay the broker under a commission agreement. The lien under this chapter is available only to the broker named in the commission agreement, and may not be assigned voluntarily or by operation of law.

(3) Subject to the requirements of subsection (4) of this section, the lien created by this chapter becomes effective on the date of the recording of a notice of claim of lien upon proceeds pursuant to subsection (6) of this section, and is perfected by such recording. Recording must be made with the county auditor or recorder in the county or counties in which the commercial real estate is located.

(4) In the case of a disposition of commercial real estate, the lien under this chapter is not effective unless it is recorded at least thirty days prior to the date a deed conveying the commercial real estate is recorded in the office of the county auditor or recorder in the county or counties in which the commercial real estate is located. In the case of a lease of commercial real estate, the lien under this chapter is not effective unless it is recorded within ninety days after the tenant takes possession of the leased commercial real estate.

(5) The lien created by this chapter is null and void unless, within ten days of recording its notice of claim of lien against proceeds, the broker delivers a copy of the notice of claim of lien against proceeds to the owner of the commercial real estate in the manner provided in RCW 60.42.070. In the case of the disposition of commercial real estate, on or before the date the deed conveying the commercial real estate is recorded, the broker shall deliver a copy of the notice of claim of lien against proceeds to the escrow closing agent closing the disposition in the manner provided in RCW 60.42.070, if the identity of the escrow closing agent is actually known by the broker.

(6) To be effective, the notice of claim of lien against proceeds must state the following:

- (a) The name, address, and telephone number of the broker;
- (b) The date of the commission agreement;
- (c) The name of the owner of the commercial real estate;
- (d) The legal description of the commercial real estate as described in the commission agreement;
- (e) The amount for which the lien is claimed, which may be stated in a dollar amount or may be stated in the form of a formula for how the amount is to be determined such as a percentage of the sales price;
- (f) The real estate license number of the broker; and
- (g) That the lien claimant has read the claim, knows the contents, and believes the same to be true and correct, and that the claim is made pursuant to a valid commission agreement, and is not frivolous, under penalties of perjury.

A copy of the commission agreement must be attached to the recorded notice of claim of lien against proceeds. The notice of claim of lien against proceeds must recite that the information contained in the notice of claim of lien against proceeds is true and accurate to the knowledge of the signatory. The notice of claim of lien against proceeds must be acknowledged pursuant to chapter 64.08 RCW. A notice of claim of lien against proceeds substantially in the following form is sufficient:

NOTICE OF CLAIM OF LIEN AGAINST PROCEEDS PURSUANT TO CHAPTER 60.42 RCW

Notice is hereby given that the person named below claims a lien as to owner's net proceeds or net rental proceeds, but not real property, pursuant to chapter 60.42 RCW. In support of this lien, the following information is submitted:

- 1. Name, telephone number, and address of lien claimant:
- 2. Washington state broker's license number of lien claimant:
- 3. Date of the written commission agreement on which this claim is based:, a true and complete copy of which is attached to this notice of claim of lien.
- 4. Name of the owner:
- 5. Legal description of the commercial real estate described in the commission agreement:
- 6. The amount for which the lien is claimed, which may be stated in a dollar amount or may be stated in the form of

a formula for how the amount is to be determined such as a percentage of the sales price:

7. The undersigned lien claimant, being sworn, states: I have read the foregoing claim, know the contents, and believe the same to be true and correct, and the claim is made pursuant to a valid commission agreement, and is not frivolous, under penalty of perjury.

Signature of lien claimant
Name, Street Address, City, State of person signing
Telephone Number of person signing

State of Washington)
) ss
County of)

Subscribed and sworn to, or affirmed, before me on
by

Signature

(Seal or stamp)

Title

My appointment expires

(Add acknowledgment pursuant to chapter 64.08 RCW)

(7) Whenever a notice of claim of lien against proceeds is recorded and a condition or event occurs, or fails to occur, that would preclude the broker from receiving compensation under the terms of the commission agreement, including the filing of a notice of claim of lien against proceeds in a manner which does not comply with this chapter, the broker shall record, within seven days following demand by the owner, a written release of the notice of claim of lien against proceeds.

(8) Whenever the amount claimed in a notice of claim of lien against proceeds is paid to the lien claimant, the lien claimant shall promptly record a satisfaction or release of the notice of claim of lien against proceeds on written demand of the owner no later than five days after receipt of payment. In the case of a disposition of commercial real estate, the escrow closing agent is required to pay to the lien claimant the owner's net proceeds up to the amount claimed in the notice of claim of lien against proceeds. If the amount claimed in the notice of claim of lien against proceeds is to be fully or partially paid to the lien claimant by the escrow closing agent, upon such disposition, then the lien claimant shall submit a release of the notice of claim of lien against proceeds in the amount of the owner's net proceeds or the amount of the lien, whichever is smaller, to the escrow closing agent to be held in escrow pending such disposition and payment. In a suit brought by the owner to compel delivery of the release by the lien claimant, if the court determines that the delay was unjustified, the court shall, in addition to ordering the release of the notice of claim of lien, award the costs of the action including reasonable attorneys' fees to the prevailing party.

(9) An owner of commercial real estate may request that a broker waive the rights to a lien under this chapter, and such a waiver contained in the commission agreement signed by the broker is effective to waive the broker's rights to a lien under this chapter. In a suit filed by a broker to recover amounts due under a commission agreement in which the broker has waived lien rights under this chapter, if the court finds that payment is due to the broker under the commission agreement, the court, in addition to awarding normal damages, shall award to the broker court costs, reasonable attorneys' fees, and statutory interest, as provided in RCW 19.52.010, from the date the deed is recorded in the event of a disposition, or from the date the tenant takes possession in the event of a lease. [1997 c 315 § 2.]

60.42.020 Disputed claim—Order to show cause—Hearing.

(1) An owner of commercial real estate subject to a recorded notice of claim of lien against proceeds under this chapter, who disputes the broker's claim in the notice of claim of lien against proceeds, may apply by motion to the superior court for the county where the commercial real estate, or some part thereof, is located for an order directing the broker to appear before the court at a time no earlier than seven nor later than fifteen days following the date of service of the motion and order on the broker, to show cause as to why the relief requested should not be granted. The motion must state the grounds upon which relief is asked and must be supported by the affidavit of the owner setting forth a concise statement of the facts upon which the motion is based.

(2) The order to show cause must clearly state that if the broker fails to appear at the time and place noted, the notice of claim of lien against proceeds must be released, with prejudice, and the broker must be ordered to pay the costs requested by the owner, including reasonable attorneys' fees.

(3) If, following a hearing on the matter, the court determines that the owner is not a party to an agreement which will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order releasing the notice of claim of lien against proceeds and awarding costs and reasonable attorneys' fees to the owner to be paid by the broker. If the court determines that the owner is a party to an agreement which will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the broker, to be paid by the owner. Such orders are final judgments.

(4) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1997 c 315 § 3.]

60.42.030 Lien on net rental proceeds—Order to show cause—Hearing.

(1) If a broker has a lien on net rental proceeds pursuant to RCW 60.42.010(2), and the broker has recorded a notice of claim of lien against proceeds and otherwise complied with the requirements of this chapter, the broker may apply by motion to the superior court for the county where the commercial real estate, or

some part thereof, is located, for an order directing the owner to appear before the court at a time no earlier than seven nor later than fifteen days following the date of service of the motion and order on the owner, and show cause as to why the relief requested should not be granted. The motion must state the grounds upon which relief is asked, and must be supported by the affidavit of the broker setting forth a concise statement of the facts upon which the motion is based.

(2) The order to show cause must clearly state that if the owner fails to appear at the time and place noted, the broker shall be entitled to an order enjoining the owner from paying the net rental proceeds from such lease to any party other than the broker, and that the owner shall be ordered to pay the costs requested by the broker, including reasonable attorneys' fees.

(3) If, following a hearing on the matter, the court determines that the owner is, or was, a party to an agreement for the lease of commercial real estate, which did or will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order enjoining the owner from paying the net rental proceeds from such lease to any party other than the broker. The court shall also order the owner to pay such net rental proceeds to the broker and award costs and reasonable attorneys' fees to the broker, to be paid by the owner. If the court determines that the owner is not, or was not, a party to an agreement for the lease of commercial real estate, which did or will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the owner, to be paid by the broker. Such orders are final judgments.

(4) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1997 c 315 § 4.]

60.42.040 Priority of lien claims. All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a notice of claim of lien against proceeds have priority over a lien created under this chapter. A prior recorded lien includes, without limitation, a valid materialmen's or mechanic's lien claim that is recorded after the recording of the broker's notice of claim of lien against proceeds but which relates back to a date prior to the recording date of the broker's notice of claim of lien against proceeds. [1997 c 315 § 5.]

60.42.050 Deposit made pending resolution of amounts due—Recording of receipt—Release of notice of claim of lien. A notice of claim of lien against proceeds recorded under this chapter must be released without further act, upon the recording of a receipt showing the deposit with the superior court of the county in which the commercial real estate, or some part thereof, is located, of an amount equal to one and one-quarter times the amount of the lien

claimed. The receipt shall be recorded in the office in which the notice of claim was recorded. The amount of the deposit in the superior court shall be held pending a resolution of amounts due to the broker and the owner. [1997 c 315 § 6.]

60.42.060 County auditor or recorder—Duties—Fees. The county auditor or recorder shall record the notice of claim of lien against proceeds, and any release thereof, in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien against proceeds for registered land need not be recorded in the Torrens register. The county auditor or recorder may not charge a higher fee for recording a notice of claim of lien against proceeds, or for a release thereof, than what the county auditor or recorder charges for other documents. [1997 c 315 § 7.]

60.42.070 Delivery of notice of claim of lien—Form—Time effective—Address. Notices to be delivered to a party under this chapter, other than service of process as required in civil actions, shall be by service of process, or by registered or certified mail, return receipt requested, or by personal or electronic delivery and obtaining evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered or an affidavit of service. Delivery is effective at the time of personal service, or personal or electronic delivery, or three days following deposit in the mail as required by this section. Notice to a broker or owner may be given to the address of the broker or owner that is contained in the commission agreement, or such other address as is contained in a written notice from the broker or owner to the party giving the notice. If no address is provided in the commission agreement, the notice to the broker may be given to the broker's address of record with the department of licensing pursuant to chapter 18.85 RCW and notice to the owner may be given to the address of the commercial real estate. [1997 c 315 § 8.]

60.42.900 Application. This chapter applies to lien claims based on a commission agreement entered into on, or after, July 27, 1997. [1997 c 315 § 9.]

60.42.901 Short title. This chapter may be known and cited as the commercial real estate broker lien act. [1997 c 315 § 10.]

Chapter 60.44

LIEN OF DOCTORS, NURSES, HOSPITALS, AMBULANCE SERVICES

Sections

60.44.010	Liens authorized.
60.44.020	Notice of lien—Contents—Filing.
60.44.030	Record of claims.
60.44.040	Taking note—Effect on lien.
60.44.050	Settlement of damages—Effect on lien.
60.44.060	Enforcement of lien—Payment as evidence.

Lien of department of social and health services for medical care of injured recipient, payment of tortfeasor or tortfeasor's insurer does not discharge lien: RCW 74.09.180, 43.20B.040, and 43.20B.050.

Lien on funds withheld by employer from employee's pay: RCW 49.52.030 and 49.52.040.

60.44.010 Liens authorized. Every operator, whether private or public, of an ambulance service or of a hospital, and every duly licensed nurse, practitioner, physician, and surgeon rendering service, or transportation and care, for any person who has received a traumatic injury and which is rendered by reason thereof shall have a lien upon any claim, right of action, and/or money to which such person is entitled against any tort-feasor and/or insurer of such tort-feasor for the value of such service, together with costs and such reasonable attorney's fees as the court may allow, incurred in enforcing such lien: PROVIDED, HOWEVER, That nothing in this chapter shall apply to any claim, right of action, or money accruing under the workers' compensation act of the state of Washington, and: PROVIDED, FURTHER, That all the said liens for service rendered to any one person as a result of any one accident or event shall not exceed twenty-five percent of the amount of an award, verdict, report, decision, decree, judgment, or settlement. [1987 c 185 § 36; 1975 1st ex.s. c 250 § 1; 1937 c 69 § 1; RRS § 1209-1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

60.44.020 Notice of lien—Contents—Filing. No person shall be entitled to the lien given by RCW 60.44.010 unless such person shall, within twenty days after the date of such injury or receipt of transportation or care, or, if settlement has not been accomplished and payment made to such injured person, then at any time before such settlement and payment, file for record with the county auditor of the county in which said service was performed, a notice of claim stating the name and address of the person claiming the lien and whether such person claims as a practitioner, physician, nurse, ambulance service, or hospital, the name and address of the patient and place of domicile or residence, the time when and place where the alleged fault or negligence of the tort-feasor occurred, and the nature of the injury if any, the name and address of the tort-feasor, if same or any thereof are known, which claim shall be subscribed by the claimant and verified before a person authorized to administer oaths. [1975 1st ex.s. c 250 § 2; 1937 c 69 § 2; RRS § 1209-2.]

60.44.030 Record of claims. The county auditor shall record the claims mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1937 c 69 § 3; RRS § 1209-4.]

60.44.040 Taking note—Effect on lien. The taking of a promissory note or other evidence of indebtedness for any services performed, as provided in this chapter, shall not discharge the lien therefor unless expressly received as a payment for such services and so specified therein. [1937 c 69 § 4; RRS § 1209-4.]

60.44.050 Settlement of damages—Effect on lien. No settlement made by and between the patient and tort

feasor and/or insurer shall discharge the lien against any money due or owing by such tort feisor or insurer to the patient or relieve the tort feisor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of any such claim of lien, signed by the claimant, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tort feisor and/or insurer, then such written release or waiver shall be delivered to the tort feisor and/or insurer. [1937 c 69 § 5; RRS § 1209-5.]

60.44.060 Enforcement of lien—Payment as evidence. Such lien may be enforced by a suit at law brought by the claimant or his assignee within one year after the filing of such lien against the said tort feisor and/or insurer. In the event that such tort feisor and/or insurer shall have made payment or settlement on account of such injury, the fact of such payment shall only for the purpose of such suit be prima facie evidence of the negligence of the tort feisor and of the liability of the payer to compensate for such negligence. [1937 c 69 § 6; RRS § 1209-6.]

Chapter 60.45

LIEN OF DEPARTMENT OF SOCIAL AND HEALTH SERVICES FOR MEDICAL CARE FURNISHED INJURED RECIPIENT

Sections

60.45.010 Medical care to injured recipient—Recovery of cost against tort feisor or tort feisor's insurer—Lien created, filing—Payment to recipient does not discharge lien.

60.45.010 Medical care to injured recipient—Recovery of cost against tort feisor or tort feisor's insurer—Lien created, filing—Payment to recipient does not discharge lien. See RCW 74.09.180, 43.20B.040, and 43.20B.050.

Chapter 60.52

LIEN FOR SERVICES OF SIRE

Sections

60.52.010 Liens authorized—Filing statement.
 60.52.020 Auditor's certificate—Contents—Posting.
 60.52.030 Statement of lien—Filing—Duration of lien.
 60.52.035 Delivery of semen by artificial insemination procedures—Lien upon female or offspring—No filing—Duration of lien—Statement of account.
 60.52.040 Foreclosure of lien.
 60.52.050 Auditor's fees.

60.52.010 Liens authorized—Filing statement. In order to secure to the owner or owners of sires payment for service, the following provisions are enacted: That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire, under the provisions of this chapter, for such service, shall file for record with the county auditor of the county where said sire is kept for service a statement, verified by oath or affirmation, to the best of his knowledge and belief, giving

the name, age, description and pedigree, as well as the terms and conditions upon which such sire is advertised for service: PROVIDED, That owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this chapter. [1890 p 451 § 1; RRS § 3056.]

60.52.020 Auditor's certificate—Contents—Posting.

The county auditor, upon the receipt of the statement as specified in RCW 60.52.010, duly verified by affidavit, shall issue a certificate to the owner or owners of said sire, which shall be posted by the owner in a conspicuous place where said sire may be stationed, which certificate shall state the name, age, description, pedigree and ownership of such sire, the terms and conditions upon which the said sire is advertised for service, and that the provisions of this chapter, so far as relates to the filing of the statement aforesaid, has been complied with. [1890 p 451 § 2; RRS § 3057.]

60.52.030 Statement of lien—Filing—Duration of lien.

The owner or owners of any such sire receiving such certificate, by complying with RCW 60.52.010 and 60.52.020, shall obtain and have a lien upon the female served for the period of eighteen months from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: PROVIDED, Said owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: PROVIDED FURTHER, That the lien upon the get of any such sire shall be a preferred lien: AND PROVIDED FURTHER, That no sale or transfer of any female animal served shall defeat the right of such lien holder. [1998 c 99 § 1; 1913 c 53 § 1; 1890 p 451 § 3; RRS § 3058.]

Effective date—1998 c 99: "This act takes effect July 1, 1998." [1998 c 99 § 3.]

60.52.035 Delivery of semen by artificial insemination procedures—Lien upon female or offspring—No filing—Duration of lien—Statement of account.

When an owner of a sire, or an owner of semen from sires, provides, for the insemination of a female, reproductively viable semen from the sire, the owner of the sire, or the owner of the semen, without satisfying the requirements of RCW 60.52.010 and 60.52.020, upon delivery of the semen by artificial insemination procedures, obtains and has a lien upon the female to which the semen is delivered by artificial insemination procedures, or a lien upon the offspring of that female as the result of delivery of the semen by artificial insemination procedures. The lien upon the female survives for eighteen months from the date of the insemination procedure; the lien upon the offspring survives for one year from the date of birth of the resulting offspring. However, the owner of the sire, or the owner of the semen, must, within ten months of the date of the insemination procedure or the date of birth, file for record, with the county auditor of the county where the insemination procedure was rendered, a statement of account, verified by affidavit, indicat-

ing the amount due to the owner for the reproductively viable semen, along with a description of the female or the name and address of the person for whom the procedure was provided. The lien, whether upon the female or upon the offspring, is a preferred lien. Sale or transfer of the inseminated female or of the offspring does not defeat the right of the lien holder. [1998 c 99 § 2.]

Effective date—1998 c 99: See note following RCW 60.52.030.

60.52.040 Foreclosure of lien. Liens under this chapter may be foreclosed as provided in chapter 60.10 RCW. [1995 c 62 § 11; 1969 c 82 § 14; 1890 p 452 § 4; RRS § 3059.]

60.52.050 Auditor's fees. For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages. [1890 p 452 § 5; RRS § 3059 1/2.]

Fees for filing chattel mortgages: RCW 62A.9-403(4), (5).

Chapter 60.56

AGISTER AND TRAINER LIENS

Sections

60.56.005	Definition of "agister."
60.56.010	Liens created.
60.56.015	Liens perfected.
60.56.018	Potential sale of animal to which lien is attached—Notice to lien holder and potential buyer.
60.56.021	Violation of RCW 60.56.018—Civil action for damages—Civil fine.
60.56.025	Lien created for care of animal seized by law enforcement officer.
60.56.035	Expiration of lien.
60.56.050	Enforcement of lien.

60.56.005 Definition of "agister." For purposes of this chapter "agister" means a farmer, ranchman, herder of cattle, livery and boarding stable keeper, veterinarian, or other person, to whom horses, mules, cattle, or sheep are entrusted for the purpose of feeding, herding, pasturing, training, caring for, or ranching. [1993 c 53 § 1.]

60.56.010 Liens created. Any agister shall have a lien upon the horses, mules, cattle, or sheep, and upon the proceeds or accounts receivable from such animals, for such amount that may be due for the feeding, herding, pasturing, training, caring for, and ranching of the animals, and shall be authorized to retain possession of the horses, mules, cattle, or sheep, until the amount is paid or the lien expires, whichever first occurs. The lien attaches on the date such amounts are due and payable but are unpaid. [1993 c 53 § 2; 1989 c 67 § 1; 1987 c 233 § 1; 1909 c 176 § 1; RRS § 1197.]

60.56.015 Liens perfected. An agister who holds a lien under RCW 60.56.010 shall perfect the lien by (1) posting notice of the lien in a conspicuous location on the premises where the lien holder is keeping the animal or animals, (2) providing a copy of the posted notice to the owner of the animal or animals, and (3) providing a copy of

the posted notice to any lien creditor as defined in RCW 62A.9-301(3) if the amount of the agister lien is in excess of one thousand five hundred dollars. A lien creditor may be determined through a search under RCW 62A.9-409. The lien holder is entitled to collect from the buyer, the seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder. [1993 c 53 § 3; 1989 c 67 § 2.]

60.56.018 Potential sale of animal to which lien is attached—Notice to lien holder and potential buyer. A party subject to a lien under RCW 60.56.010 shall notify (1) the lien holder of a potential sale of the animal or animals to which the lien is attached, (2) a potential buyer of the existence of the unsatisfied lien against the animal or animals for sale, and (3) any lien holder of record of the potential sale of the animal or animals and of the existence of the unsatisfied lien. [1993 c 53 § 4.]

60.56.021 Violation of RCW 60.56.018—Civil action for damages—Civil fine. A person injured by a violation of RCW 60.56.018 may bring civil action in the appropriate court of jurisdiction to recover the actual damages sustained, together with the costs of the suit, including reasonable attorney fees and any other costs associated with satisfaction of the lien. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained.

If damages are awarded under this section, the court may impose on a liable party a civil fine of not more than one thousand dollars to be paid to the plaintiff. [1993 c 53 § 5.]

60.56.025 Lien created for care of animal seized by law enforcement officer. If a law enforcement officer authorizes removal of an animal pursuant to chapter 16.52 RCW, the person or entity receiving the animal and aiding in its care or restoration to health shall have a lien upon the animal for the cost of feeding, pasturing, and caring otherwise for the animal. The lien attaches on the date such costs are due and payable but are unpaid. Any such person is authorized to retain possession of the animal until such costs are paid or the lien expires, whichever first occurs. [1987 c 233 § 2.]

60.56.035 Expiration of lien. Any lien created by this chapter shall expire one hundred eighty days after it attaches, unless, within that period, an action to enforce the lien is filed pursuant to RCW 60.56.050. [1993 c 53 § 6; 1987 c 233 § 3.]

60.56.050 Enforcement of lien. Any person having a lien under the provisions of this chapter may enforce the same under chapter 60.10 RCW or, at the agister's option, by an action in any court of competent jurisdiction. If enforcement is through court proceeding, the property may be sold on execution for the purpose of satisfying the amount of the judgment and costs of sale, together with the proper costs of keeping the same up to the time of the sale. [1993 c 53 § 7; 1987 c 233 § 4; 1891 c 80 § 2; RRS § 1198. Formerly RCW 60.56.020, part.]

Chapter 60.60

LIEN FOR TRANSPORTATION, STORAGE, ADVANCEMENTS, ETC.

Sections

60.60.010	Liens created.
60.60.020	Livestock and perishable property—Sale of.
60.60.030	Sale of other property.
60.60.040	Application of proceeds.
60.60.050	Special contract not affected.
60.60.060	Notice, how given.

60.60.010 Liens created. Every person, firm or corporation who, as a commission merchant, carrier, wharfinger or storage warehouseman, shall make advances for freight, transportation, wharfage or storage upon the personal property of another, or shall carry or store such personal property, shall have a lien thereon, so long as the same remains in his possession, for the charges for advances, freight, transportation, wharfage or storage, and it shall be lawful for such person, firm or corporation to cause such property to be sold as is herein in this chapter provided. [1927 c 144 § 1; Code 1881 § 1980; 1863 p 421 § 11; 1860 p 288 § 11; RRS § 1191.]

60.60.020 Livestock and perishable property—Sale of. If said property consists of livestock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or consists of perishable property liable, if kept, to destruction, waste or great depreciation, the person, firm or corporation having such lien may sell the same upon giving ten days' notice. [1927 c 144 § 2; Code 1881 § 1981; 1863 p 421 § 13; 1860 p 288 § 13; RRS § 1192.]

60.60.030 Sale of other property. All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: PROVIDED, That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale. [Code 1881 § 1982; 1863 p 421 § 12; 1860 p 288 § 12; RRS § 1193.]

60.60.040 Application of proceeds. The moneys arising from sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage or storage, for whose benefit the sale shall [have] been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property, who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special

fund for the benefit of the lawful claimant thereof. [Code 1881 § 1983; 1863 p 421 § 14; 1860 p 288 § 14; RRS § 1194.]

60.60.050 Special contract not affected. Nothing in this chapter contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties as to the advances, affreightment, wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this chapter. [Code 1881 § 1984; RRS § 1195.]

60.60.060 Notice, how given. All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution. [Code 1881 § 1985; 1863 p 421 § 15; 1860 p 288 § 15; RRS § 1196.]

Sale of property on execution: Chapter 6.21 RCW.

Chapter 60.64

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1915 ACT

Sections

- 60.64.003 "Hotel" defined.
- 60.64.005 Record of guests—Hotels and trailer camps.
- 60.64.007 Liability for loss of valuables, baggage and other property.
- 60.64.010 Lien on property of guest—"Guest" defined.
- 60.64.040 Sale—Notice—Disposition of funds.
- 60.64.050 Obtaining accommodations by fraud—Penalty.

Lien of hotels, lodging and boarding houses—1890 act: Chapter 60.66 RCW.

60.64.003 "Hotel" defined. See RCW 19.48.010.

60.64.005 Record of guests—Hotels and trailer camps. See RCW 19.48.020.

60.64.007 Liability for loss of valuables, baggage and other property. See RCW 19.48.030 and 19.48.070.

60.64.010 Lien on property of guest—"Guest" defined. The keeper of any hotel, boarding house or lodging house, whether individual, partnership or corporation, has a lien upon, and may retain, all baggage, sample cases, and other property, lawfully in the possession of a guest, boarder, or lodger, brought upon the premises by such guest, boarder, or lodger, for the proper charges due from him or her, on account of his or her food, board, room rent, lodging and accommodation, and for such extras as are furnished at his or her request, and for all money and credit paid for or advanced to him or her; and for the costs of enforcing such lien; and said hotel keeper, inn keeper, lodging house keeper or boarding house keeper, shall have the right to retain and hold possession of such baggage, sample cases and other property until the amount of such charges and moneys be fully paid, and to sell such baggage, sample cases, or other property for the payment of such lien, charges and moneys in the manner provided in RCW 60.64.040; and such baggage, sample cases and property shall not be subject to attachment or execution until such lien and storage charges

and the cost of satisfying such lien are fully satisfied: PROVIDED, HOWEVER, That if any baggage, sample cases, or property becoming subject to the lien herein provided for does not belong to the guest, boarder or lodger who incurred the charges or indebtedness secured thereby at the time when such charges or indebtedness shall be incurred, and if the hotel, inn, boarding house or lodging house keeper entitled to such lien receives actual notice of such fact at any time before the sale of such baggage, sample cases or property hereunder, then and in that event such baggage, sample cases and property which are subject to said lien and do not belong to said guest, boarder or lodger at the time when such charges or indebtedness shall be incurred, shall not be subject to sale in the manner herein provided, but the same may be sold in the manner provided by law for the sale of property under a writ of execution to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness. A guest, within the meaning of this chapter and chapter 19.48 RCW, includes each and every person who is a member of the family of, or dependent upon, a guest, boarder or lodger, in such hotel, inn, boarding house or lodging house, and for whose support such tenant, guest, boarder or lodger is legally liable. [1929 c 216 § 4; 1915 c 190 § 5; RRS § 6864. Formerly RCW 60.64.010 through 60.64.030.]

Severability—1929 c 216: See RCW 19.48.900.

60.64.040 Sale—Notice—Disposition of funds. If such lien and all such charges and moneys are not fully paid and satisfied within sixty days from the time when such charges and moneys, respectively, become due, the keeper of such hotel, inn, boarding house or lodging house, may then proceed to sell such baggage, sample cases and other property, or any part thereof, at public auction, after giving ten days notice of the time and place of sale by posting said notice in three public places in the city or town wherein such hotel, inn, boarding house or lodging house is located, and by mailing a notice of the time and place of sale to such guest[,], boarder or lodger at the place of residence, if any, registered by him or her on the register, if any, of said hotel, inn, boarding house or lodging house; and after satisfying the lien and paying all legal charges due from such guest, boarder or lodger, including proper charges for storage of the said baggage, sample cases or property, and any expense of selling the same that may accrue, any residue remaining shall, on demand, within one year after such sale, be paid to such guest, boarder or lodger, or his or her legal representatives: PROVIDED, HOWEVER, That should such guest, boarder or lodger fail or refuse to register from any particular town or city, or not register at all, the notice herein required to be mailed shall be addressed to the name of such guest, boarder or lodger at the city or town wherein such hotel, inn, boarding house or lodging house is located; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding house or lodging house keeper for the recovery of such baggage, sample cases, or property, or of the value thereof, or for any damage arising from the failure of such guest, boarder or lodger to receive such baggage, sample cases, or property. [1929 c 216 § 5; 1915 c 190 § 6; RRS § 6865.]

60.64.050 Obtaining accommodations by fraud—Penalty. See RCW 19.48.110.

60.68.903 Effective date—1992 c 133.

Chapter 60.66

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1890 ACT

Sections

60.66.010 Lien on property of guest.
60.66.020 Sale to satisfy lien—Notice.

Lien of hotels, lodging and boarding houses—1915 act: Chapter 60.64 RCW.

60.66.010 Lien on property of guest. Hereafter all hotel keepers, inn keepers, lodging house keepers and boarding house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers or boarders, brought into such hotel, inn, lodging house or boarding house by such guests, lodgers or boarders, for the proper charges due from such guests, lodgers or boarders for their accommodation, board or lodging and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property or other valuables until such charges are fully paid, and to sell such baggage, property or other valuables for the payment of such charges in the manner provided in RCW 60.66.020. [1890 p 96 § 1; RRS § 1201.]

60.66.020 Sale to satisfy lien—Notice. Whenever any baggage, property or other valuables which have been retained by any hotel keeper, inn keeper, lodging house keeper or boarding house keeper, in his possession by virtue of the provision of RCW 60.66.010, shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, inn keeper, lodging house keeper or boarding house keeper to sell such baggage, property or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the post office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property or valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand. [1890 p 96 § 2; RRS § 1202.]

Chapter 60.68

UNIFORM FEDERAL LIEN REGISTRATION ACT (Formerly: Lien for internal revenue taxes)

Sections

60.68.005 Application of chapter.
60.68.015 Notice of federal liens.
60.68.025 Certification of federal liens.
60.68.035 Fees for recording or filing federal liens.
60.68.045 Tax lien index—Duties of county auditor—Uniform commercial code filing system—Department of licensing.
60.68.900 Uniform application of chapter.
60.68.901 Short title.
60.68.902 Effective date—1988 c 73.

(1998 Ed.)

60.68.005 Application of chapter. This chapter applies only to federal tax liens and to other federal liens, notices of which under any act of congress or any regulation adopted pursuant thereto are required or permitted to be recorded in the same manner as notices of federal tax liens. [1988 c 73 § 1.]

60.68.015 Notice of federal liens. (1) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be recorded for record in accordance with this chapter.

(2) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be recorded in the office of the recorder of the county in which the real property subject to the liens is situated.

(3) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed with the department of licensing. [1992 c 133 § 1; 1988 c 73 § 2.]

60.68.025 Certification of federal liens. Certification of notices of liens, certificates, or other notices affecting federal liens by the United States secretary of the treasury or the secretary's delegate, or by an official or entity of the United States responsible for recording or certifying of notice of any other lien, entitles those liens to be recorded and no other attestation, certification, or acknowledgement is necessary. [1988 c 73 § 3.]

60.68.035 Fees for recording or filing federal liens. (1) The fee for recording a lien on real estate with the county auditor shall be as set forth in RCW 36.18.010.
(2) The fee for filing liens of personal property with the department of licensing of the state of Washington shall be as determined by the department.

(3) The recording or filing officer shall bill the district directors of the internal revenue service or other appropriate federal officials on a monthly basis for fees for documents filed for record by them. [1992 c 133 § 2; 1988 c 73 § 4.]

60.68.045 Tax lien index—Duties of county auditor—Uniform commercial code filing system—Department of licensing. (1) When a notice of a tax lien is recorded under RCW 60.68.015(2), the county auditor shall forthwith enter it in an alphabetical tax lien index to be provided by the board of county commissioners showing on one line the name and residence of the taxpayer named in the notice, the collector's serial number of the notice, the date and hour of recording, and the amount of tax and penalty assessed.

(2) When a notice of a tax lien is filed under RCW 60.68.015(3), the department of licensing shall enter it in the uniform commercial code filing system showing the name and address of the taxpayer as the debtor, and the internal revenue service as a secured party, and include the collector's serial number of the notice, the date and hour of

filing, and the amount of tax and penalty assessed. [1992 c 133 § 3; 1988 c 73 § 5.]

60.68.900 Uniform application of chapter. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1988 c 73 § 6.]

60.68.901 Short title. This chapter may be known and cited as the uniform federal lien registration act. [1988 c 73 § 7.]

60.68.902 Effective date—1988 c 73. This chapter shall take effect July 1, 1988. [1988 c 73 § 10.]

60.68.903 Effective date—1992 c 133. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1992. [1992 c 133 § 4.]

Chapter 60.70

LIMITATIONS ON NONCONSENSUAL COMMON LAW LIENS

Sections

60.70.010	Intent—Definitions.
60.70.020	Real property common law liens unenforceable—Personal property common law liens limited.
60.70.030	No duty to accept filing of common law lien—Filing of a notice of invalid lien.
60.70.040	No duty to disclose record of common law lien.
60.70.050	Immunity from liability for failure to accept filing or disclose common law lien.
60.70.060	Petition for order directing common law lien claimant to appear before court—Service of process—Filing fee—Costs and attorneys' fees.
60.70.070	Claim of lien against a federal, state, or local official or employee—Performance of duties—Validity.

60.70.010 Intent—Definitions. (1) It is the intent of this chapter to limit the circumstances in which nonconsensual common law liens shall be recognized in this state.

(2) For the purposes of this chapter:

- (a) "Lien" means an encumbrance on property as security for the payment of a debt;
- (b) "Nonconsensual common law lien" is a lien that:
- Is not provided for by a specific statute;
 - Does not depend upon the consent of the owner of the property affected for its existence; and
 - Is not a court-imposed equitable or constructive lien;

(c) "State or local official or employee" means an appointed or elected official or any employee of a state agency, board, commission, department in any branch of state government, or institution of higher education; or of a school district, political subdivision, or unit of local government of this state; and

(d) "Federal official or employee" means an employee of the government and federal agency as defined for purposes of the federal tort claims act, 28 U.S.C. Sec. 2671.

(3) Nothing in this chapter is intended to affect:

- Any lien provided for by statute;
- Any consensual liens now or hereafter recognized under the common law of this state; or
- The ability of courts to impose equitable or constructive liens. [1995 c 19 § 1; 1986 c 181 § 1.]

60.70.020 Real property common law liens unenforceable—Personal property common law liens limited. Nonconsensual common law liens against real property shall not be recognized or enforceable. Nonconsensual common law liens claimed against any personal property shall not be recognized or enforceable if, at any time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property. [1986 c 181 § 2.]

60.70.030 No duty to accept filing of common law lien—Filing of a notice of invalid lien. (1) No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien, except as provided in subsection (2) of this section.

(2) No person shall be obligated to accept for filing any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.

(3) If a claim of lien as described in subsection (2) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee; the assistant attorney general representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee; or the attorney representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at his or her last known address. No recording officer or county shall be liable for the acceptance for filing of a claim of lien as described in subsection (2) of this section, nor for the acceptance for filing of a notice of invalid lien pursuant to this subsection. [1995 c 19 § 4; 1986 c 181 § 3.]

60.70.040 No duty to disclose record of common law lien. No person has a duty to disclose an instrument of record or file that attempts to give notice of a common law lien. This section does not relieve any person of any duty which otherwise may exist to disclose a claim of lien authorized by statute or imposed by order of a court having jurisdiction over property affected by the lien. [1986 c 181 § 4.]

60.70.050 Immunity from liability for failure to accept filing or disclose common law lien. A person is not liable for damages arising from a refusal to record or file or a failure to disclose any claim of a common law lien of record. [1986 c 181 § 5.]

60.70.060 Petition for order directing common law lien claimant to appear before court—Service of process—Filing fee—Costs and attorneys' fees. (1) Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, may petition the superior court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served upon the lien claimant by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of lien shall be stricken and released and that the lien claimant shall be ordered to pay the costs incurred by the petitioner, including reasonable attorneys' fees.

(3) The clerk of the court shall assign a cause number to the petition and obtain from the petitioner a filing fee of thirty-five dollars.

(4) If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the petitioner. [1995 c 19 § 2.]

60.70.070 Claim of lien against a federal, state, or local official or employee—Performance of duties—Validity. Any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or

unless a specific statute authorizes the filing of such lien. [1995 c 19 § 3.]

Chapter 60.72

LANDLORD'S LIEN FOR RENT

Sections

60.72.010 Liens created—Priority—Extent—Exceptions
60.72.040 Foreclosure of lien

60.72.010 Liens created—Priority—Extent—Exceptions. Any person to whom rent may be due, his or her executors, administrators, or assigns, shall have a lien for such rent upon personal property which has been used or kept on the rented premises by the tenant, except property of third persons delivered to or left with the tenant for storage, repair, manufacture, or sale, or under conditional bills of sale duly filed, and such property as is exempt from execution by law. Such liens for rent shall be paramount to, and have preference over, all other liens except liens for taxes, general and special liens of labor, and liens of mortgages duly recorded prior to the tenancy. Such liens shall not be for more than two months' rent due, except that a lien for up to four months' rent due may be established when the tenant is renting a mobile home lot in a mobile home park as defined in RCW 59.20.030. No lien may be enforced for any rent or any installment thereof which has been due for more than two months at the time of the commencement of an action to foreclose such liens, except that a lien may be enforced for rent due for up to four months at the time of the commencement of an action to foreclose the lien when the tenant is renting a mobile home lot in a mobile home park as defined in RCW 59.20.030. No writing or recording shall be necessary to create such lien; and if such property be removed from the rented premises and not returned to the owner, agent, executor, administrator, or assign, the lien shall continue and be a superior lien on the property so removed for ten days from the date of its removal, and the lien may be enforced against the property wherever found. In the event the property contained in the rented premises be destroyed by fire or other elements, the lien shall extend to any money that may be received by the tenant as indemnity for the destruction of the property, nor shall the lien be lost by the sale of the property, except merchandise sold in the usual course of trade or to purchasers without notice of the tenancy. The provisions of this chapter shall not apply to, nor shall it be enforced against, the property of tenants in dwelling houses or apartments or any other place that is used exclusively as a home or residence of the tenant and his or her family. [1990 c 169 § 3; 1927 c 108 § 1; 1917 c 165 § 1; RRS § 1203-1. Formerly RCW 60.72.010, 60.72.020, 60.72.030.]

60.72.040 Foreclosure of lien. Said lien may be foreclosed as provided in chapter 60.10 RCW. [1995 c 62 § 12; 1969 c 82 § 15; 1917 c 165 § 2; RRS § 1203-2.]

Foreclosure of chattel mortgages: Article 62A.9 RCW.

Chapter 60.76

LIEN OF EMPLOYEES FOR CONTRIBUTIONS
TO BENEFIT PLANS

Sections

- 60.76.010 Lien authorized.
 60.76.020 Notice of lien—Contents—Filing and serving.
 60.76.030 Manner of serving notice.
 60.76.040 Manner of enforcing lien—Costs.
 60.76.050 Priority of lien.

60.76.010 Lien authorized. Every employer who is required to pay contributions, by agreement or otherwise, into a fund of any employee benefit plan in order that his employee may participate therein, shall pay such contributions in the required amounts and at the stipulated time or each employee affected thereby shall have a lien on the earnings and on all property used in the operation of said employer's business to the extent of the moneys, plus any penalties, due to be paid by or on his behalf in order to qualify him for participation therein, and for any moneys expended or obligations incurred for medical, hospital, or other expenses to which he would have been entitled had such required contributions been paid. [1961 c 86 § 1.]

60.76.020 Notice of lien—Contents—Filing and serving. The lien claimant, or his representative on his behalf, or the trustee of the fund on the claimant's behalf, within sixty days after such payment becomes due shall file for record with the auditor of the county wherein the claimant is or was employed by such employer a notice of claim, containing a statement of the demand, the name of the employer and the name of the person employing the claimant, if known, with a statement of the pertinent terms and conditions of the employee benefit plan and the time when such contributions are due and were to have been paid, and shall serve or mail a copy thereof to said employer within such time. [1961 c 86 § 2.]

60.76.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1961 c 86 § 3.]

60.76.040 Manner of enforcing lien—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed when said lien is upon real property, or within the same time and in the same manner as chattel liens are enforced when the lien is upon personal property. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, a reasonable attorney's fee in the superior court, court of appeals, and supreme court, and court costs. [1971 c 81 § 130; 1961 c 86 § 4.]

60.76.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the contribution payments became due and is also preferred to any encumbrance which may have attached previous to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1961 c 86 § 5.]

Chapter 60.80

LIEN FOR UNRECORDED UTILITY CHARGES

Sections

- 60.80.005 Definitions.
 60.80.010 Seller of real property responsible for satisfying lien—Closing agent's duties and liabilities—Fee.
 60.80.020 Seller's duty to inform closing agent—Written waiver—Closing agent's duties—Utility's duties—Payment of final billing.
 60.80.900 Effective date—1996 c 43.

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

(1) Except as otherwise provided in this subsection (1), "charges" include: (a) All lawful charges assessed by a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, *56.16, 57.08, or 87.03 RCW, but not evidenced by a recorded lien, recorded covenant, recorded agreement, or special assessment roll filed with the city or county treasurer or assessor, and not billed and collected with property taxes; and (b) penalties and interest, and reasonable attorneys' fees and other costs of foreclosure if foreclosure proceedings have been commenced.

(2) "Closing agent" means an escrow agent as defined in RCW 18.44.010(4) or a person exempt from licensing and registration requirements under RCW 18.44.020, handling the escrow on the sale of the real property.

(3) "Real estate agent" means a real estate broker, real estate salesperson, associate real estate broker, or person as defined in RCW 18.85.010 (1) through (4).

(4) "Business day" means a day the offices of the county or counties in which the utility in question provides service are open for business. [1996 c 43 § 1.]

*Reviser's note: Chapter 56.16 RCW was repealed by 1996 c 230 § 1702, effective July 1, 1997.

60.80.010 Seller of real property responsible for satisfying lien—Closing agent's duties and liabilities—Fee.

(1) Unless otherwise stated and acknowledged in writing by the purchaser, the seller of a fee interest in real property is responsible for satisfying, upon closing, any lien provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, 36.94.150, *56.16.100, *57.08.080, or 87.03.445.

(2) No closing agent may refuse a written request by the seller or purchaser of a fee interest in real property to administer the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in RCW 60.80.005. Except as otherwise provided in this subsection (2), a closing agent who refuses such a written request is liable to the purchaser for unpaid charges for utility services covered by the request. A closing agent is not liable if the closing agent's refusal is based on the seller's inaccurate or incomplete identification of utilities providing service to the property, or if a utility fails to provide an estimated or actual final billing, or written extension of the per diem rate, as required by RCW 60.80.020, or if disbursement of closing funds necessary to satisfy the unpaid charges would violate RCW 18.44.070.

(3) A closing agent may charge a fee for performing the services required of the closing agent by this chapter, which

fee may be in addition to other fees or settlement charges collected in the course of ordinary settlement practices. [1996 c 43 § 2.]

*Reviser's note: RCW 56.16.100 and 57.08.080 were repealed by 1996 c 230 §§ 1702 and 1703, respectively, effective July 1, 1997.

60.80.020 Seller's duty to inform closing agent—Written waiver—Closing agent's duties—Utility's duties—Payment of final billing.

(1) Unless the seller and purchaser waive, in writing, the services of a closing agent in administering the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in RCW 60.80.005, the seller shall, as a provision in a written agreement for the purchase and sale of real estate, inform the closing agent for the sale of the names and addresses of all utilities, including special districts, providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, *56.16, 57.08, or 87.03 RCW. The provision of the information in a written agreement for the purchase and sale of real estate constitutes a written request to the closing agent to administer disbursement of closing funds necessary to satisfy unpaid charges.

Unless the seller and purchaser have waived the services of a closing agent as provided in this subsection, the closing agent shall submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, *56.16, 57.08, or 87.03 RCW. Either the seller or purchaser may submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, *56.16, 57.08, or 87.03 RCW.

The written request must identify the property by both legal description and address. The closing agent, seller, or purchaser may submit a written request to a utility by facsimile. In requesting final billings for utility services, the closing agent may rely upon information provided by the seller, and a closing agent or a real estate agent who is not the seller is not liable for inaccurate or incomplete information.

(2) After receiving a written request for a final billing for utility services to real property to be sold, a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, *56.16, 57.08, or 87.03 RCW shall provide the requesting party with a written estimated or actual final billing as provided in this section. If the utility is unable to provide a written estimated or actual final billing or written extension of the per diem rate, due to insufficient information to identify the account, the utility shall notify the requesting party in writing that the information is insufficient to identify the account.

The utility shall provide the written estimated or actual final billing, or statement that the information in the request is insufficient to identify the account, to the requesting party within seven business days of receipt of the written request if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger. A utility may provide a written estimated or actual final billing to the requesting party by facsimile.

(a) The final billing must include all outstanding charges and, in addition to the estimated or actual final amount

owing as of the stated closing date, must state the average per diem rate for the utility or utilities involved, including taxes and other charges, which shall apply for up to thirty days beyond the stated closing date if the closing date is delayed.

(b) If closing is delayed beyond thirty days, a new estimated or actual final billing must be requested in writing. In lieu of furnishing a written revised final billing, the utility may extend, in writing, the number of days for which the per diem charge applies. The utility shall respond within seven business days of receipt of the written request for a new estimated or actual final billing if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger.

(c) If a utility fails to provide a written estimated or actual final billing, written extension of the per diem rate, or statement that the information in the request is insufficient to identify the account, within seven business days of receipt of a written request if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger, an unrecorded lien provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, 36.94.150, *56.16.100, **57.08.080, or 87.03.445 for charges incurred prior to the closing date is extinguished, and the utility may not recover the charges from the purchaser of the property.

(d) A closing agent shall inform the seller and purchaser of all applicable estimated and actual final billings furnished by utilities.

In performing his or her duties under this chapter, a closing agent may rely upon information provided by utilities and is not liable if information provided by utilities is inaccurate or incomplete.

(3) If closing occurs no later than the last date for which per diem charges may be applied, full payment of the estimated or actual final billing plus per diem charges extinguishes a lien of the utility provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, 36.94.150, *56.16.100, **57.08.080, or 87.03.445 for charges incurred prior to the closing date.

(4)(a) Except as otherwise provided in this subsection (4)(a), this section does not limit the right of a utility to recover from the purchaser of the property unpaid utility charges incurred prior to closing, if the utility did not receive a written request for a final billing or if the utility complied with subsection (2) of this section.

A utility may not recover from a purchaser unpaid utility charges incurred prior to closing in excess of an estimated final billing.

(b) This section does not limit the right of a utility to recover unpaid utility charges incurred prior to closing, including unpaid utility charges in excess of an estimated final billing, from the seller of the property, or from the person or persons who incurred the charges.

(c) If an estimated final billing is in excess of the actual final billing, unless otherwise directed in writing by the seller and purchaser, a utility shall refund any overcharge to the seller of the property by sending the refund in the seller's name to the last address provided by the seller. A utility shall refund the overcharge within fourteen business days of the date the utility receives payment for the final

billing, unless a county treasurer acts in an ex officio capacity as the treasurer of a utility, in which case the utility shall refund the overcharge within thirty business days of the date the utility receives payment for the final billing. [1996 c 43 § 3.]

Reviser's note: *(1) Chapter 56.16 RCW was repealed by 1996 c 230 § 1702, effective July 1, 1997.

**(2) RCW 57.08.080 was repealed by 1996 c 230 § 1703, effective July 1, 1997.

60.80.900 Effective date—1996 c 43. This act shall take effect January 1, 1997. [1996 c 43 § 4.]

Chapter 60.84

LIEN ON DIES, MOLDS, FORMS, AND PATTERNS

Sections

60.84.005 Definitions.

60.84.010 Plastic fabricator, molder, and person conducting a plastic fabricating business has a lien—May retain possession—Notice to customer—Foreclosure by notice and sale.

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

(1) "Customer" means an individual or entity that contracts with, causes, or caused a plastic fabricator to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product.

(2) "Plastic fabricator," "fabricator," or "molder" means an individual or entity, including but not limited to a tool or die maker, that contracts to or uses a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product for a customer. [1996 c 235 § 3.]

60.84.010 Plastic fabricator, molder, and person conducting a plastic fabricating business has a lien—May retain possession—Notice to customer—Foreclosure by notice and sale. (1) A plastic fabricator, molder, and person conducting a plastic fabricating business has a lien, dependent on possession, on a die, mold, form, or pattern belonging to the customer for the amount owing from the customer for plastic fabrication work and for the value of materials used in the work. The fabricator may retain possession of the die, mold, form, or pattern until the charges are paid. This lien does not have priority over any security interest in the die, mold, form, or pattern that is perfected at the time the fabricator acquires the lien.

(2) Before a lien is enforced, the fabricator must cause written notice to be delivered personally or by registered or certified mail to the last known address of the customer. The notice must state that the fabricator will exercise its lien right because of nonpayment. The notice must also state the amount of money owed and demand payment. The fabricator's name, address, and phone number must be included in the notice.

(3) If the fabricator is not paid the total due within sixty days after the notice has been received by the customer, the fabricator may foreclose the lien by notice and sale as provided in this section, if the die, mold, form, or pattern is in the fabricator's possession. The fabricator must send

notice of intended sale, by registered or certified mail with return receipt requested, to the last known address of the customer. The notice must include: A description of the die, mold, form, or pattern to be sold; a statement of intent to sell the die, mold, form, or pattern at public sale; the date, time, and place of the sale; and an itemized statement of moneys owing.

If there is no return receipt or if the postal service returns the notice as undeliverable, the fabricator shall publish notice of intention to sell the die, mold, form, or pattern at public sale in a newspaper of general circulation in the county where the die, mold, form, or pattern is physically located. The publication must include: A description of the die, mold, form, or pattern; the name, address, and phone number of the customer; the name, address, and phone number of the fabricator; and the date, time, and place of the sale.

The fabricator is entitled to the amount owing plus the costs of holding, preparing for sale, and selling the die, mold, form, or pattern. The fabricator is also entitled to reasonable attorneys' fees incurred.

(4) If the sale proceeds exceed the amount owing, the excess must be paid to subsequent lien holders. Any remainder must be remitted to the customer.

(5) A public sale may not be held under this section if it is in violation of a right of a customer under federal patent or copyright law. [1996 c 235 § 4.]

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

- 61.10** Mortgage insurance.
- 61.12** Foreclosure of real estate mortgages and personal property liens.
- 61.16** Assignment and satisfaction of real estate and chattel mortgages.
- 61.24** Deeds of trust.
- 61.30** Real estate contract forfeitures.
- 61.34** Equity skimming.

Banks, real estate holdings: RCW 30.04.210.
Consumer loan act: Chapter 31.04 RCW.
Corporate powers of banks and trust companies: RCW 30.08.140, 30.08.150.
Credit unions: Chapter 31.12 RCW.
Crop credit associations: Chapter 31.16 RCW.
Excise tax on real estate sales: Chapter 82.45 RCW.
Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.
Fraudulent conveyances: Chapter 19.40 RCW.
Insurance companies, investments: Chapter 48.13 RCW.
Interest, usury: Chapter 19.52 RCW.
Joint tenancies: Chapter 64.28 RCW.
Liens: Title 60 RCW.
Motor vehicles, certificates of ownership: Chapter 46.12 RCW.
Mutual savings banks investments: Chapter 32.20 RCW.
powers and duties: Chapters 32.08, 32.12, 32.16 RCW.
Negotiable instruments: Title 62A RCW.
Possession of real property to collect mortgaged, pledged or assigned rents and profits: RCW 7.28.230.
Property taxes: Title 84 RCW.
Real estate brokers and salespersons: Chapter 18.85 RCW.
Real property and conveyances: Title 64 RCW.
Recording master form instruments and mortgages or deeds of trust incorporating master form provisions: RCW 65.08.160.
Recording mortgages: Title 65 RCW.
Retail installment sales of goods and services: Chapter 63.14 RCW.
Savings and loan associations: Title 33 RCW.
Statute of frauds: Chapter 19.36 RCW.

- 61.10.040 Not required when loan is less than eighty percent of value—Compliance with federal requirements.
- 61.10.900 Severability—1998 c 255.
- 61.10.901 Effective date—1998 c 255.

61.10.010 Definitions. As used in this chapter:

(1) "Institutional third party" means the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage association, and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of mortgage insurance, which are the same or substantially the same as those utilized by the institutions named in this subsection.

(2) "Mortgage insurance" means insurance, including mortgage guarantee insurance, against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid in a residential mortgage transaction.

(3) "Residential mortgage transaction" means entering into a loan for personal, family, household, or purchase money purposes that is secured by a deed of trust or mortgage on owner-occupied, one-to-four unit, residential real property located in the state of Washington. [1998 c 255 § 1.]

61.10.020 Condition of residential mortgage transaction—Disclosures—Notices—Harm to borrower—Compliance with federal requirements. (1) If a borrower is required to obtain and maintain mortgage insurance as a condition of entering into a residential mortgage transaction, the lender shall disclose to the borrower whether and under what conditions the borrower has the right to cancel the mortgage insurance in the future. This disclosure shall include:

(a) Any identifying loan or insurance information, or other information, necessary to permit the borrower to communicate with the servicer or lender concerning the private mortgage insurance;

(b) The conditions that are required to be satisfied before the mortgage insurance may be canceled; and

(c) The procedures required to be followed by the borrower to cancel the mortgage insurance.

The disclosure required in this subsection shall be made in writing at the time the transaction is entered into.

(2) For residential mortgage transactions with mortgage insurance, the lender, or the person servicing the residential mortgage transaction if it is not the lender, annually shall provide the borrower with:

(a) A notice containing the same information as required to be disclosed under subsection (1) of this section; or

(b) A statement indicating that the borrower may be able to cancel the mortgage insurance and that the borrower

Chapter 61.10 MORTGAGE INSURANCE

Sections

- 61.10.010 Definitions.
- 61.10.020 Condition of residential mortgage transaction—Disclosures—Notices—Harm to borrower—Compliance with federal requirements.
- 61.10.030 Termination of insurance during term of indebtedness—Exception—Required conditions—Application to residential mortgage transactions—Compliance with federal requirements.

may contact the lender or loan servicer at a designated address and phone number to find out whether the insurance can be canceled and the conditions and procedures to effect cancellation.

The notice or statement required by this subsection shall be provided in writing in a clear and conspicuous manner in or with each annual statement of account.

(3) The notices and statements required in this section shall be provided without cost to the borrower.

(4) Any borrower in a residential mortgage transaction who is harmed by a violation of this section may obtain injunctive relief, may recover from the party who caused such harm by failure to comply with this section up to three times the amount of mortgage insurance premiums wrongly collected, and may recover reasonable attorneys' fees and costs of such action.

(5) This section does not apply to any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan or to loans insured by the federal housing administration or the veterans administration.

(6) Subsection (1) of this section applies to residential mortgage transactions entered into on or after July 1, 1998. Subsection (2) of this section applies to any residential mortgage transaction existing on July 1, 1998, or entered into on or after July 1, 1998.

(7) A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, prescribing mortgage insurance disclosures and notifications shall be deemed in compliance with this section. [1998 c 255 § 2.]

61.10.030 Termination of insurance during term of indebtedness—Exception—Required conditions—Application to residential mortgage transactions—Compliance with federal requirements. (1) Except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to a residential mortgage transaction purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of indebtedness, the lender or servicer of a residential mortgage transaction may not charge or collect future payments from a borrower for mortgage insurance, and the borrower is not obligated to make such payments, if all of the following conditions are satisfied:

(a) The borrower makes a written request to terminate the obligation to make future payments for mortgage insurance;

(b) The residential mortgage transaction is at least two years old;

(c) The outstanding principal balance of the residential loan is not greater than eighty percent of the current fair market value of the property and is:

(i) For loans made for the purchase of the property, less than eighty percent of the lesser of the sales price or the appraised value at the time the transaction is entered into; or

(ii) For all other residential mortgage transactions, less than eighty percent of the appraised value at the time the residential loan transaction was entered into.

The lender or servicer may request that a current appraisal be done to verify the outstanding principal balance

is less than eighty percent of the current fair market value of the property; unless otherwise agreed to in writing, the lender or servicer selects the appraiser and splits the cost with the borrower;

(d) The borrower's scheduled payment of monthly installments or principal, interest, and any escrow obligations is current at the time the borrower requests termination of his or her obligation to continue to pay for mortgage insurance, those installments have not been more than thirty days late in the last twelve months, and the borrower has not been assessed more than one late penalty over the past twelve months;

(e) A notice of default has not been recorded against the property as the result of a nonmonetary default in the previous twelve months.

(2) This section applies to residential mortgage transactions entered into on or after July 1, 1998.

(3) This section does not apply to:

(a) Any residential mortgage transaction that is funded in whole or in part pursuant to authority granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for mortgage insurance during the term of the indebtedness; or

(b) Any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan.

(4) If the residential mortgage transaction will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for mortgage insurance shall be deemed in compliance with this section.

(5) A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, governing the cancellation of mortgage insurance shall be deemed in compliance with this section. [1998 c 255 § 3.]

61.10.040 Not required when loan is less than eighty percent of value—Compliance with federal requirements. On or after July 1, 1998, no borrower entering into a residential mortgage transaction in which the principal amount of the loan is less than eighty percent of the fair market value of the property shall be required to obtain mortgage insurance. Fair market value for a purchase money loan is the lesser of the sales price or the appraised value. This section shall not apply to residential mortgage transactions in an amount in excess of the maximum limits established by institutional third parties where the borrower and the lender have agreed in writing to mortgage insurance.

A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, governing the requirement of obtaining mortgage insurance shall be deemed in compliance with this section. [1998 c 255 § 4.]

61.10.900 Severability—1998 c 255. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 255 § 5.]

61.10.901 Effective date—1998 c 255. This act takes effect July 1, 1998. [1998 c 255 § 6.]

Chapter 61.12

FORECLOSURE OF REAL ESTATE MORTGAGES AND PERSONAL PROPERTY LIENS

Sections

- 61.12.010 Encumbrances shall be by deed.
- 61.12.020 Mortgage—Form—Contents—Effect.
- 61.12.030 Removal of property from mortgaged premises.
- 61.12.031 Removal of property from mortgaged premises—Penalty.
- 61.12.040 Foreclosure—Venue.
- 61.12.050 When remedy confined to mortgaged property.
- 61.12.060 Judgment—Order of sale—Satisfaction—Upset price.
- 61.12.061 Exception as to mortgages held by the United States.
- 61.12.070 Decree to direct deficiency—Waiver in complaint.
- 61.12.080 Deficiency judgment—How enforced.
- 61.12.090 Execution on decree—Procedure.
- 61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights.
- 61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service.
- 61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes.
- 61.12.100 Levy for deficiency under same execution.
- 61.12.110 Notice of sale on deficiency.
- 61.12.120 Concurrent actions prohibited.
- 61.12.130 Payment of sums due—Stay of proceedings.
- 61.12.140 Sale in parcels to pay installments due.
- 61.12.150 Sale of whole property—Disposition of proceeds.
- 61.12.170 Recording.

Community realty, encumbering: RCW 26.16.040.

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

Decedent's estate, liability for mortgage lien: RCW 11.04.270.

Foreclosure by organizations not admitted to transact business in state: Chapter 23B.18 RCW.

Mortgagee cannot maintain action for possession: RCW 7.28.230.

Mortgaging of decedents' estates: Chapter 11.56 RCW.

Notice and sale summary foreclosure of personal property liens: Chapter 60.10 RCW.

Partition, sales on credit: RCW 7.52.290, 7.52.420.

Possession of real estate to collect mortgaged rents and profits: RCW 7.28.230.

Receiver may be appointed to protect mortgagee's interest: RCW 7.60.020.

Sales under execution and redemption: Chapter 6.21 RCW.

61.12.010 Encumbrances shall be by deed. See RCW 64.04.010.

61.12.020 Mortgage—Form—Contents—Effect. Mortgages of land may be made in substantially the following form: The mortgagor (here insert name or names) mortgages to (here insert name or names) to secure the payment of (here insert the nature and amount of indebtedness, showing when due, rate of interest, and whether evidenced by note, bond or other instrument or not) the following described real estate (here insert description) situated in the county of, state of Washington.
Dated this day of, 19. . .

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any

lawful agreement or condition. [1929 c 33 § 12; RRS § 10555. Prior: 1888 c 26 § 1; 1886 p 179 § 6.]

61.12.030 Removal of property from mortgaged premises. When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from said real estate any fixtures, buildings, or permanent improvements including a manufactured home whose title has been eliminated under chapter 65.20 RCW, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his or their written consent for such removal or destruction. [1989 c 343 § 21; 1899 c 75 § 1; RRS § 2709, part. **FORMER PART OF SECTION:** 1899 c 75 § 2 now codified as RCW 61.12.031.]

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

61.12.031 Removal of property from mortgaged premises—Penalty. Any person wilfully violating the provisions of RCW 61.12.030 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [1899 c 75 § 2; RRS § 2709, part. Formerly RCW 61.12.030, part.]

61.12.040 Foreclosure—Venue. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the superior court of the county where the land, or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage. [Code 1881 § 609; 1877 p 127 § 614; 1869 p 145 § 563; 1854 p 207 § 408; RRS § 1116.]

Real property, actions concerning to be brought where property is located: RCW 4.12.010.

61.12.050 When remedy confined to mortgaged property. When there is no express agreement in the mortgage nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged. [Code 1881 § 610; 1877 p 127 § 615; 1869 p 146 § 564; 1854 p 207 § 409; RRS § 1117.]

61.12.060 Judgment—Order of sale—Satisfaction—Upset price. In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. The court, in ordering the sale, may in its discretion, take judicial notice of economic conditions, and after a proper hearing, fix a minimum or upset price to which the mortgaged premises must be bid or sold before confirmation of the sale.

The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset price, conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment. If an upset price has been established, the plaintiff may be required to credit this amount upon the judgment as a condition to confirmation. If the fair value as found by the court, when applied to the mortgage debt, discharges it, no deficiency judgment shall be granted. [1935 c 125 § 1; Code 1881 § 611; 1877 p 127 § 616; 1869 p 146 § 565; 1854 p 207 § 410; RRS § 1118. FORMER PART OF SECTION: 1935 c 125 § 1 1/2 now codified as RCW 61.12.061.]

Confirmation of sale of land: RCW 6.21.110.

61.12.061 Exception as to mortgages held by the United States. The provisions of *this act shall not apply to any mortgage while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof as security or pledge of the maker, its successors or assigns. [1935 c 125 § 1 1/2; RRS § 1118-1. Formerly RCW 61.12.060, part.]

*Reviser's note: "this act" appears in 1935 c 125 § 1 1/2; section 1 of the 1935 act amends Code 1881 § 611; the 1935 act is codified as RCW 61.12.060 and 61.12.061.

61.12.070 Decree to direct deficiency—Waiver in complaint. When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor: PROVIDED, HOWEVER, That in all cases where the mortgagee or other owner of such mortgage has expressly waived any right to a deficiency judgment in the complaint, as provided by RCW 6.23.020, there shall be no such judgment for deficiency, and the remedy of the mortgagee or other owner of the mortgage shall be confined to the sale of the property mortgaged. [1961 c 196 § 4; Code 1881 § 612; 1877 p 127 § 617; 1869 p 146 § 566; 1854 p 208 § 411; RRS § 1119.]

61.12.080 Deficiency judgment—How enforced. Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner. [Code 1881 § 622; 1877 p 129 § 625; 1869 p 148 § 575; RRS § 1120.]

Enforcement of judgments: Title 6 RCW.

61.12.090 Execution on decree—Procedure. A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell

such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in RCW 6.21.030. [1988 c 231 § 36; 1899 c 53 § 1; RRS § 1121. Cf. Code 1881 § 613; 1869 p 146 § 567; 1854 p 208 § 412.]

Severability—1988 c 231: See note following RCW 6.01.050.

Property exempt from execution and attachment: RCW 6.15.010.

61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights. In actions to foreclose mortgages on real property improved by structure or structures, if the court finds that the mortgagor or his successor in interest has abandoned said property for six months or more, the purchaser at the sheriff's sale shall take title in and to such property free from all redemption rights as provided for in RCW 6.23.010 et seq. upon confirmation of the sheriff's sale by the court. Lack of occupancy by, or by authority of, the mortgagor or his successor in interest for a continuous period of six months or more prior to the date of the decree of foreclosure, coupled with failure to make payment upon the mortgage obligation within the said six month period, will be prima facie evidence of abandonment. [1965 c 80 § 1; 1963 c 34 § 1.]

Deed to issue upon request immediately after confirmation of sale: RCW 6.21.120.

61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service. When proceeding under RCW 61.12.093 through 61.12.095 no deficiency judgment shall be allowed. No mortgagee shall deprive any mortgagor, his successors in interest, or any redemptioner of redemption rights by default decree without alleging such intention in the complaint: PROVIDED, HOWEVER, That such complaint need not be served upon any person who acquired the status of such successor in interest or redemptioner after the recording of lis pendens in such foreclosure action. [1965 c 80 § 2; 1963 c 34 § 2.]

61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes. RCW 61.12.093 and 61.12.094 shall not apply to property used primarily for agricultural purposes. [1965 c 80 § 3; 1963 c 34 § 3.]

61.12.100 Levy for deficiency under same execution. In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same execution. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county. [Code 1881 § 620; 1877 p 129 § 623; 1873 p 151 § 571; 1869 p 148 § 573; RRS § 1123.]

61.12.110 Notice of sale on deficiency. When sales of other property not embraced in the mortgage or decree of

sale are made under the execution to satisfy any deficiency remaining due upon judgment, two weeks' publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said county. [Code 1881 § 621; 1877 p 129 § 624; 1869 p 148 § 574; RRS § 1124.]

Notice of sales under execution: RCW 6.21.020.

61.12.120 Concurrent actions prohibited. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure. [Code 1881 § 614; 1877 p 128 § 619; 1869 p 146 § 568; 1854 p 208 § 413; RRS § 1125.]

61.12.130 Payment of sums due—Stay of proceedings. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue. [Code 1881 § 615; 1877 p 128 § 620; 1869 p 147 § 569; 1854 p 208 § 414; RRS § 1126.]

61.12.140 Sale in parcels to pay installments due. In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold, as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected. [Code 1881 § 616; 1877 p 128 § 620 (2d of 2 sections with same number); 1869 p 147 § 570; 1854 p 208 § 415; RRS § 1127.]

61.12.150 Sale of whole property—Disposition of proceeds. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns. [Code 1881 § 617; 1877 p 128 § 621; 1869 p 147 § 571; 1854 p 208 § 416; RRS § 1128.]

61.12.170 Recording. See chapter 65.08 RCW.

Chapter 61.16

ASSIGNMENT AND SATISFACTION OF REAL ESTATE AND CHATTEL MORTGAGES

Sections

61.16.010 Assignments, how made—Satisfaction by assignee.

61.16.020 Mortgages, how satisfied of record.

61.16.030 Failure to satisfy—Damages—Order.

Effect of recording assignment of mortgage: RCW 65.08.120.

61.16.010 Assignments, how made—Satisfaction by assignee. Any person to whom any real estate mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record. [1995 c 62 § 13; 1897 c 23 § 1; RRS § 10616.]

Validating—1897 c 23: "All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages." [1897 c 23 § 2.]

61.16.020 Mortgages, how satisfied of record. Whenever the amount due on any mortgage is paid, the mortgagee or the mortgagee's legal representatives or assigns shall, at the request of any person interested in the property mortgaged, execute an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [1995 c 62 § 14; 1985 c 44 § 13; 1901 c 52 § 1; 1886 p 116 § 1; RRS § 10614.]

61.16.030 Failure to satisfy—Damages—Order. If the mortgagee fails to acknowledge satisfaction of the mortgage as provided in RCW 61.16.020 sixty days from the date of such request or demand, the mortgagee shall forfeit and pay to the mortgagor damages and a reasonable attorneys' fee, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the

mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded. [1995 c 62 § 15; 1984 c 14 § 1; 1886 p 117 § 2; RRS § 10615.]

Chapter 61.24 DEEDS OF TRUST

Sections

- 61.24.005 Definitions.
- 61.24.010 Trustee, qualifications—Successor trustee.
- 61.24.020 Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception.
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- 61.24.100 Deficiency judgments—Foreclosure—Trustee's sale—Application of chapter.
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- 61.24.135 Consumer protection act—Unfair or deceptive acts or practices.
- 61.24.140 Assignment of rents—Collecting payment of rent.

Possession of real property by trustee of deed of trust to collect rents and profits: RCW 7.28.230.

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

(1) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

(3) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(4) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

(5) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

(6) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the

obligations secured by a deed of trust in any written agreement other than the deed of trust.

(7) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(8) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

(9) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

(10) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

(11) "Person" means any natural person, or legal or governmental entity. [1998 c 295 § 1.]

61.24.010 Trustee, qualifications—Successor trustee.

(1) The trustee of a deed of trust under this chapter shall be:

(a) Any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

(c) Any attorney who is an active member of the Washington state bar association at the time the attorney is named trustee; or

(d) Any professional corporation incorporated under chapter 18.100 RCW, any professional limited liability company formed under chapter 25.15 RCW, any general partnership, including limited liability partnerships, formed under chapter 25.04 RCW, all of whose shareholders, members, or partners, respectively, are either licensed attorneys or entities, provided all of the owners of those entities are licensed attorneys, or any domestic corporation wholly owned by any of the entities under this subsection (1)(d); or

(e) Any agency or instrumentality of the United States government; or

(f) Any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

[1998 c 295 § 2; 1991 c 72 § 58; 1987 c 352 § 1; 1981 c 161 § 1; 1975 1st ex.s. c 129 § 1; 1965 c 74 § 1.]

61.24.020 Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception. Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed by trustee's sale. The county auditor shall record the deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: **PROVIDED**, That any agency of the United States government may be both trustee and beneficiary under the same deed of trust. A deed of trust conveying real property that is used principally for agricultural purposes may be foreclosed as a mortgage. Pursuant to RCW 62A.9-501(4), when a deed of trust encumbers both real and personal property, the trustee is authorized to sell all or any portion of the grantor's interest in that real and personal property at a trustee's sale. [1998 c 295 § 3; 1985 c 193 § 2; 1975 1st ex.s. c 129 § 2; 1965 c 74 § 2.]

Application—1985 c 193: "This act shall apply to foreclosures commenced, by the giving of a notice of default pursuant to RCW 61.24.030(6), after July 28, 1985." [1985 c 193 § 5.]

61.24.030 Requisites to trustee's sale. It shall be requisite to a trustee's sale:

- (1) That the deed of trust contains a power of sale;
- (2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;
- (3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;
- (4) That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: **PROVIDED**, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;
- (5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated;
- (6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must have a street address in this state where personal service of process may be made; and

(1998 Ed.)

(7) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) Each county in which the deed of trust is recorded and the document number given to the deed of trust upon recording by each county auditor or recording officer;

(c) That the beneficiary has declared the borrower or grantor to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs, or fees that the borrower, grantor, or any guarantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) The total of (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) That failure to cure the alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal, and publication of a notice of sale, and that the property described in (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) That the effect of the recordation, transmittal, and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) That the effect of the sale of the grantor's property by the trustee will be to deprive the grantor of all their interest in the property described in (a) of this subsection; and

(j) That the borrower, grantor, and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground. [1998 c 295 § 4; 1990 c 111 § 1; 1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.040 Foreclosure and sale—Notice of sale. A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, the trustee shall:

(a) Record a notice in the form described in RCW 61.24.040(1)(f) in the office of the auditor in each county in which the deed of trust is recorded;

(b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and if their addresses are stated in a recorded instrument evidencing their interest, lien, or

claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

- (i) The borrower and grantor;
- (ii) The beneficiary of any deed of trust or mortgagee of any mortgage, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;
- (iii) The vendee in any real estate contract, the lessee in any lease, or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;
- (iv) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale;
- (v) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed; and
- (vi) The occupants of property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, whether or not the occupant's rental agreement is recorded, which notice may be a single notice addressed to "occupants" for each unit known to the trustee or beneficiary;

(c) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the day of, at the hour of . . . o'clock . . M. at [street address and location if inside a building] in the City of, State of Washington, sell at

public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of, State of Washington, to-wit:

[If any personal property is to be included in the trustee's sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated, recorded, under Auditor's File No., records of County, Washington, from, as Grantor, to, as Trustee, to secure an obligation in favor of, as Beneficiary, the beneficial interest in which was assigned by, under an Assignment recorded under Auditor's File No. [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

III.

The default(s) for which this foreclosure is made is/are as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$, together with interest as provided in the note or other instrument secured from the day of, and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the . . . day of The default(s) referred to in paragraph III must be cured by the . . . day of (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discon-

tinued and terminated if at any time on or before the day of , , (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the day of , (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:

.....
.....
.....

by both first class and certified mail on the day of , , proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served on the day of , , with said written notice of default or the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

..... } Trustee
..... }
..... } Address
..... }
..... } Phone

[Acknowledgment]

(2) In addition to providing the borrower and grantor the notice of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

NOTICE OF FORECLOSURE
Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to , the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the day of ,

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the day of , [11 days before the sale date]. To date, these arrears and costs are as follows:

	Currently due to reinstate on. . . .	Estimated amount that will be due to reinstate on. . . .
		(11 days before the date set for sale)
Delinquent payments from , in the amount of \$ /mo.:	\$	\$
Late charges in the total amount of:	\$	\$
		Estimated Amounts
Attorneys' fees:	\$	\$
Trustee's fee:	\$	\$
Trustee's expenses: (Itemization)		
Title report	\$	\$
Recording fees	\$	\$
Service/Posting of Notices	\$	\$
Postage/Copying expense	\$	\$
Publication	\$	\$
Telephone charges	\$	\$
Inspection fees	\$	\$
.....	\$	\$
.....	\$	\$
TOTALS	\$	\$

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
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You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the . . . day of [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to:, whose address is, telephone () AFTER THE DAY OF, YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

NAME:
 ADDRESS:
 TELEPHONE NUMBER:

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your

property will be sold. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

(3) In addition, the trustee shall cause a copy of the notice of sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale;

(4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;

(6) The trustee may for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by a public proclamation at the time and place fixed for sale in the notice of sale or, alternatively, by giving notice of the time and place of the postponed sale in the manner and to the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of such notice once in the newspaper(s) described in RCW 61.24.040(3), more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under RCW 61.24.040(1), if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

(8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured.

(9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X.

NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW.

(10) Only one copy of all notices required by this chapter need be given to a person who is both the borrower and the grantor. All notices required by this chapter that are given to a general partnership are deemed given to each of its general partners, unless otherwise agreed by the parties. [1998 c 295 § 5; 1989 c 361 § 1; 1987 c 352 § 3; 1985 c 193 § 4; 1981 c 161 § 3; 1975 1st ex.s. c 129 § 4; 1967 c 30 § 1; 1965 c 74 § 4.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.042 Notice to guarantor—Contents—Failure to provide. The beneficiary may give the notices of default, trustee's sale, and foreclosure referred to in RCW 61.24.030(7) and 61.24.040 to any one or more of the guarantors of a commercial loan at the time they are given to the grantor. In addition to the information contained in the notices provided to the grantor, these notices shall state that (1) the guarantor may be liable for a deficiency judgment to the extent the sale price obtained at the trustee's sale is less than the debt secured by the deed of trust; (2) the guarantor has the same rights to reinstate the debt, cure the default, or repay the debt as is given to the grantor in order to avoid the trustee's sale; (3) the guarantor will have no right to redeem the property after the trustee's sale; (4) subject to such longer periods as are provided in the Washington deed of trust act, chapter 61.24 RCW, any action brought to enforce a guaranty must be commenced within one year after the trustee's sale, or the last trustee's sale under any deed of trust granted to secure the same debt; and (5) in any action for a deficiency, the guarantor will have the right to establish the fair value of the property as of the date of the trustee's sale, less prior liens and encumbrances, and to limit its liability for a deficiency to the difference between the debt and the greater of such fair value or the sale price paid at the trustee's sale, plus interest and costs. The failure of the beneficiary to provide any guarantor the notice referred to in this section does not invalidate either the notices given to the borrower or the grantor, or the trustee's sale. [1998 c 295 § 6.]

61.24.045 Requests for notice of sale. Any person desiring a copy of any notice of sale described in RCW 61.24.040(1)(f) under any deed of trust, other than a person entitled to receive such a notice under RCW 61.24.040(1) (b) or (c), must, after the recordation of such deed of trust and before the recordation of the notice of sale, cause to be filed for record, in the office of the auditor of any county in which the deed of trust is recorded, a duly acknowledged request for a copy of any notice of sale. The request shall be signed and acknowledged by the person to be notified or such person's agent, attorney, or representative; shall set

forth the name, mailing address, and telephone number, if any, of the person or persons to be notified; shall identify the deed of trust by stating the names of the parties thereto, the date the deed of trust was recorded, the legal description of the property encumbered by the deed of trust, and the auditor's file number under which the deed of trust is recorded; and shall be in substantially the following form:

REQUEST FOR NOTICE

Request is hereby made that a copy of any notice of sale described in RCW 61.24.040(1)(f) under that certain Deed of Trust dated, 19., recorded on, 19., under auditor's file No., records of County, Washington, from, as Grantor, to, as Trustee, to secure an obligation in favor of, as Beneficiary, and affecting the following described real property:

(Legal Description)

be sent by both first class and either registered or certified mail, return receipt requested, to at

Dated this day of, 19.

Signature

(Acknowledgment)

A request for notice under this section shall not affect title to, or be deemed notice to any person that any person has any right, title, interest in, lien or charge upon, the property described in the request for notice. [1985 c 193 § 1.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.050 Interest conveyed by trustee's deed—Sale is final if acceptance is properly recorded—Redemption precluded after sale. When delivered to the purchaser, the trustee's deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee's sale which the grantor had or had the power to convey at the time of the execution of the deed of trust, and such as the grantor may have thereafter acquired. If the trustee accepts a bid, then the trustee's sale is final as of the date and time of such acceptance if the trustee's deed is recorded within fifteen days thereafter. After a trustee's sale, no person shall have any right, by statute or otherwise, to redeem the property sold at the trustee's sale. [1998 c 295 § 7; 1965 c 74 § 5.]

61.24.060 Rights and remedies of trustee's sale purchaser. The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the grantor under the deed of trust and anyone having an interest junior to the deed of trust, including occupants and tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW. [1998 c 295 § 8; 1967 c 30 § 2; 1965 c 74 § 6.]

61.24.070 Trustee's sale, who may bid at—If beneficiary is purchaser—If purchaser is not beneficiary. (1) The trustee may not bid at the trustee's sale. Any other

person, including the beneficiary, may bid at the trustee's sale.

(2) The trustee shall, at the request of the beneficiary, credit toward the beneficiary's bid all or any part of the monetary obligations secured by the deed of trust. If the beneficiary is the purchaser, any amount bid by the beneficiary in excess of the amount so credited shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. If the purchaser is not the beneficiary, the entire bid shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. [1998 c 295 § 9; 1965 c 74 § 7.]

61.24.080 Disposition of proceeds of sale—Notices—Surplus funds. The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his or her attorney: **PROVIDED**, That the aggregate of the charges by the trustee and his or her attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in that court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the notice of trustee's sale, and an affidavit of mailing as provided in this subsection, with the clerk of the superior court of the county in which the sale took place. The trustee shall mail copies of the notice of the surplus, the notice of trustee's sale, and the affidavit of mailing to each party to whom the notice of trustee's sale was sent pursuant to RCW 61.24.040(1). The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon compliance with this subsection, the trustee shall be discharged from all further responsibilities for the surplus. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to the surplus in the order of priority that it had attached to the property. A party seeking disbursement of the surplus funds shall file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion shall be personally served upon, or mailed in the manner specified in RCW 61.24.040(1)(b), to all parties to whom the trustee mailed notice of the surplus, and any other party who has entered an appearance in the proceeding, not less than twenty days prior to the hearing of the motion. The clerk shall not disburse such surplus except upon order of the superior court of such county. [1998 c 295 § 10; 1981 c 161 § 5; 1967 c 30 § 3; 1965 c 74 § 8.]

61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment—Payments tendered to trustee. (1) At any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues

the sale pursuant to RCW 61.24.040(6), at any time prior to the eleventh day before the actual sale, the borrower, grantor, any guarantor, any beneficiary under a subordinate deed of trust, or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

(a) The entire amount then due under the terms of the deed of trust and the obligation secured thereby, other than such portion of the principal as would not then be due had no default occurred, and

(b) The expenses actually incurred by the trustee enforcing the terms of the note and deed of trust, including a reasonable trustee's fee, together with the trustee's reasonable attorney's fees, together with costs of recording the notice of discontinuance of notice of trustee's sale.

(2) Any person entitled to cause a discontinuance of the sale proceedings shall have the right, before or after reinstatement, to request any court, excluding a small claims court, for disputes within the jurisdictional limits of that court, to determine the reasonableness of any fees demanded or paid as a condition to reinstatement. The court shall make such determination as it deems appropriate, which may include an award to the prevailing party of its costs and reasonable attorneys' fees, and render judgment accordingly. An action to determine fees shall not forestall any sale or affect its validity.

(3) Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place.

(4) In the case of a default which is occasioned by other than failure to make payments, the person or persons causing the said default shall pay the expenses incurred by the trustee and the trustee's fees as set forth in subsection (1)(b) of this section.

(5) Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at eight percent per annum, payments made for trustees' costs and fees incurred as authorized, and reasonable attorney's fees and costs incurred resulting from any judicial action commenced to enforce his or her rights to advances under this section.

(6) If the default is cured and the obligation and the deed of trust reinstated in the manner provided, the trustee shall properly execute, acknowledge, and cause to be recorded a notice of discontinuance of trustee's sale under that deed of trust. A notice of discontinuance of trustee's sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets forth a record of the deed of trust and the auditor's file number under which the deed of trust is recorded, and a reference to the notice of sale and the auditor's file number under which the notice of sale is recorded, and a notice that the sale is discontinued.

(7) Any payments required under this section as a condition precedent to reinstatement of the deed of trust shall be tendered to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by

verified electronic transfer, or any combination thereof. [1998 c 295 § 11; 1987 c 352 § 4; 1981 c 161 § 6; 1975 1st ex.s. c 129 § 5; 1967 c 30 § 4; 1965 c 74 § 9.]

61.24.100 Deficiency judgments—Foreclosure—Trustee's sale—Application of chapter. (1) Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2)(a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after June 11, 1998:

(a)(i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial

loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater, plus interest on the amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan

executed prior to June 11, 1998, shall be determined in accordance with the laws existing prior to June 11, 1998. [1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.]

61.24.110 Reconveyance by trustee. The trustee shall reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto. [1998 c 295 § 13; 1981 c 161 § 7; 1965 c 74 § 11.]

61.24.120 Other foreclosure provisions preserved. This chapter shall not supersede nor repeal any other provision now made by law for the foreclosure of security interests in real property. [1965 c 74 § 12.]

61.24.130 Restraint of sale by trustee—Conditions—Notice. (1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper ground, a trustee's sale. The court shall require as a condition of granting the restraining order or injunction that the applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed:

(a) In the case of default in making the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

(b) In the case of default in making payment of an obligation then fully payable by its terms, such sums shall be the amount of interest accruing monthly on said obligation at the nondefault rate, paid to the clerk of the court every thirty days.

In the case of default in performance of any nonmonetary obligation secured by the deed of trust, the court shall impose such conditions as it deems just.

In addition, the court may condition granting the restraining order or injunction upon the giving of security by the applicant, in such form and amount as the court deems proper, for the payment of such costs and damages, including attorneys' fees, as may be later found by the court to have been incurred or suffered by any party by reason of the restraining order or injunction. The court may consider, upon proper showing, the grantor's equity in the property in determining the amount of said security.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as

provided in RCW 61.24.040(1)(f), the court granting such restraining order or injunction, or before whom the order or injunction is returnable, shall, at the request of the trustee, set a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1)(a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(4) If a trustee's sale has been stayed as a result of the filing of a petition in federal bankruptcy court and an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court's order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1)(a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(5) Subsections (3) and (4) of this section are permissive only and do not prohibit the trustee from proceeding with a trustee's sale following termination of any injunction or stay on any date to which such sale has been properly continued in accordance with RCW 61.24.040(6). [1998 c 295 § 14; 1987 c 352 § 5; 1981 c 161 § 8; 1975 1st ex.s. c 129 § 6; 1965 c 74 § 13.]

61.24.135 Consumer protection act—Unfair or deceptive acts or practices. It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86 RCW, for any person, acting alone or in concert with others, to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted pursuant to a power of sale in a deed of trust. However, it is not an unfair or deceptive act or practice for any person, including a trustee, to state that a property subject to a recorded notice of trustee's sale or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition, or for the beneficiary to arrange to provide financing for a particular bidder or to reach any good faith agreement with the borrower, grantor, any guarantor, or any junior lienholder. [1998 c 295 § 15.]

61.24.140 Assignment of rents—Collecting payment of rent. The beneficiary shall not enforce or attempt to enforce an assignment of rents by demanding or collecting rent from a tenant occupying property consisting solely of a single-family residence, or a condominium, cooperative, or

other dwelling unit in a multiplex or other building containing fewer than five residential units, without first giving the tenant either a court order authorizing payment of rent to the beneficiary or a written consent by the tenant's landlord to the payment. It is a defense to an eviction based on nonpayment of rent that the tenant paid the rent due to the beneficiary pursuant to a court order or a landlord's written consent. [1998 c 295 § 16.]

Chapter 61.30

REAL ESTATE CONTRACT FORFEITURES

Sections

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

(1) "Contract" or "real estate contract" means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. "Contract" or "real estate contract" does not include earnest money agreements and options to purchase.

(2) "Cure the default" or "cure" means to perform the obligations under the contract which are described in the notice of intent to forfeit and which are in default, to pay the costs and attorneys' fees prescribed in the contract, and, subject to RCW 61.30.090(1), to make all payments of money required of the purchaser by the contract which first become due after the notice of intent to forfeit is given and are due when cure is tendered.

(3) "Declaration of forfeiture" means the notice described in RCW 61.30.070(2).

(4) "Forfeit" or "forfeiture" means to cancel the purchaser's rights under a real estate contract and to terminate all right, title, and interest in the property of the purchaser and of persons claiming by or through the purchaser, all to the extent provided in this chapter, because of a breach of one or more of the purchaser's obligations under

the contract. A judicial foreclosure of a real estate contract as a mortgage shall not be considered a forfeiture under this chapter.

(5) "Notice of intent to forfeit" means the notice described in RCW 61.30.070(1).

(6) "Property" means that portion of the real property which is the subject of a real estate contract, legal title to which has not been conveyed to the purchaser.

(7) "Purchaser" means the person denominated in a real estate contract as the purchaser of the property or an interest therein or, if applicable, the purchaser's successors or assigns in interest to all or any part of the property, whether by voluntary or involuntary transfer or transfer by operation of law. If the purchaser's interest in the property is subject to a proceeding in probate, a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "purchaser" means the personal representative, the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "purchaser" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest.

(8) "Required notices" means the notice of intent to forfeit and the declaration of forfeiture.

(9) "Seller" means the person denominated in a real estate contract as the seller of the property or an interest therein or, if applicable, the seller's successors or assigns in interest to all or any part of the property or the contract, whether by voluntary or involuntary transfer or transfer by operation of law. If the seller's interest in the property is subject to a proceeding in probate, a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "seller" means the personal representative, the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "seller" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest and does not include an assignee who has not been conveyed legal title to any portion of the property.

(10) "Time for cure" means the time provided in RCW 61.30.070(1)(e) as it may be extended as provided in this chapter or any longer period agreed to by the seller. [1988 c 86 § 1; 1985 c 237 § 1.]

61.30.020 Forfeiture or foreclosure—Notices—Other remedies not limited. (1) A purchaser's rights under a real estate contract shall not be forfeited except as provided in this chapter. Forfeiture shall be accomplished by giving and recording the required notices as specified in this chapter. This chapter shall not be construed as prohibiting or limiting any remedy which is not governed or restricted by this chapter and which is otherwise available to the seller or the purchaser. At the seller's option, a real estate contract may be foreclosed in the manner and subject to the law applicable to the foreclosure of a mortgage in this state.

(2) The seller's commencement of an action to foreclose the contract as a mortgage shall not constitute an election of remedies so as to bar the seller from forfeiting the contract under this chapter for the same or different breach. Similarly, the seller's commencement of a forfeiture under this chapter shall not constitute an election of remedies so as to bar the seller from foreclosing the contract as a mortgage.

However, the seller shall not maintain concurrently an action to foreclose the contract and a forfeiture under this chapter whether for the same or different breaches. If, after giving or recording a notice of intent to forfeit, the seller elects to foreclose the contract as a mortgage, the seller shall record a notice cancelling the notice of intent to forfeit which refers to the notice of intent by its recording number. Not later than ten days after the notice of cancellation is recorded, the seller shall mail or serve copies of the notice of cancellation to each person who was mailed or served the notice of intent to forfeit, and shall post it in a conspicuous place on the property if the notice of intent was posted. The seller need not publish the notice of cancellation. [1988 c 86 § 2; 1985 c 237 § 2.]

61.30.030 Conditions to forfeiture. It shall be a condition to forfeiture of a real estate contract that:

(1) The contract being forfeited, or a memorandum thereof, is recorded in each county in which any of the property is located;

(2) A breach has occurred in one or more of the purchaser's obligations under the contract and the contract provides that as a result of such breach the seller is entitled to forfeit the contract; and

(3) Except for petitions for the appointment of a receiver, no arbitration or judicial action is pending on a claim made by the seller against the purchaser on any obligation secured by the contract. [1988 c 86 § 3; 1985 c 237 § 3.]

61.30.040 Notices—Persons required to be notified—Recording. (1) The required notices shall be given to each purchaser last known to the seller or the seller's agent or attorney giving the notice and to each person who, at the time the notice of intent to forfeit is recorded, is the last holder of record of a purchaser's interest. Failure to comply with this subsection in any material respect shall render any purported forfeiture based upon the required notices void.

(2) The required notices shall also be given to each of the following persons whose interest the seller desires to forfeit if the default is not cured:

(a) The holders and claimants of record at the time the notice of intent to forfeit is recorded of any interests in or liens upon all or any portion of the property derived through the purchaser or which are otherwise subordinate to the seller's interest in the property; and

(b) All persons occupying the property at the time the notice of intent to forfeit is recorded and whose identities are reasonably discoverable by the seller.

Any forfeiture based upon the required notices shall be void as to each person described in this subsection (2) to whom the notices are not given in accordance with this chapter in any material respect.

(3) The required notices shall also be given to each person who at the time the notice of intent to forfeit is recorded has recorded in each county in which any of the property is located a request to receive the required notices, which request (a) identifies the contract being forfeited by reference to its date, the original parties thereto, and a legal description of the property; (b) contains the name and

address for notice of the person making the request; and (c) is executed and acknowledged by the requesting person.

(4) Except as otherwise provided in the contract or other agreement with the seller and except as otherwise provided in this section, the seller shall not be required to give any required notice to any person whose interest in the property is not of record or if such interest is first acquired after the time the notice of intent to forfeit is recorded. Subject to subsection (5) of this section, all such persons hold their interest subject to the potential forfeiture described in the recorded notice of intent to forfeit and shall be bound by any forfeiture made pursuant thereto as permitted in this chapter as if the required notices were given to them.

(5) Before the commencement of the time for cure, the notice of intent to forfeit shall be recorded in each county in which any of the property is located. The notice of intent to forfeit shall become ineffective for all purposes one year after the expiration of the time for cure stated in such notice or in any recorded extension thereof executed by the seller or the seller's agent or attorney unless, prior to the end of that year, the declaration of forfeiture based on such notice or a lis pendens incident to an action under this chapter is recorded. The time for cure may not be extended in increments of more than one year each, and extensions stated to be for more than one year or for an unstated or indefinite period shall be deemed to be for one year for the purposes of this subsection. Recording a lis pendens when a notice of intent to forfeit is effective shall cause such notice to continue in effect until the later of one year after the expiration of the time for cure or thirty days after final disposition of the action evidenced by the lis pendens.

(6) The declaration of forfeiture shall be recorded in each county in which any of the property is located after the time for cure has expired without the default having been cured. [1988 c 86 § 4; 1985 c 237 § 4.]

61.30.050 Notices—Form—Method of service. (1) The required notices shall be given in writing. The notice of intent to forfeit shall be signed by the seller or by the seller's agent or attorney. The declaration of forfeiture shall be signed and sworn to by the seller. The seller may execute the declaration of forfeiture through an agent under a power of attorney which is of record at the time the declaration of forfeiture is recorded, but in so doing the seller shall be subject to liability under RCW 61.30.150 to the same extent as if the seller had personally signed and sworn to the declaration.

(2) The required notices shall be given:

(a) In any manner provided in the contract or other agreement with the seller; and

(b) By either personal service in the manner required for civil actions in any county in which any of the property is located or by mailing a copy to the person for whom it is intended, postage prepaid, by certified or registered mail with return receipt requested and by regular first class mail, addressed to the person at the person's address last known to the seller or the seller's agent or attorney giving the notice. For the purposes of this subsection, the seller or the seller's agent or attorney giving the notice may rely upon the address stated in any recorded document which entitles a person to receive the required notices unless the seller or the

seller's agent or attorney giving the notice knows such address to be incorrect.

If the address or identity of a person for whom the required notices are intended is not known to or reasonably discoverable at the time the notice is given by the seller or the seller's agent or attorney giving the notice, the required notices shall be given to such person by posting a copy in a conspicuous place on the property and publishing a copy thereof. The notice shall be directed to the attention of all persons for whom the notice is intended, including the names of the persons, if so known or reasonably discoverable. The publication shall be made in a newspaper approved pursuant to RCW 65.16.040 and published in each county in which any of the property is located or, if no approved newspaper is published in the county, in an adjoining county, and if no approved newspaper is published in the county or adjoining county, then in an approved newspaper published in the capital of the state. The notice of intent to forfeit shall be published once a week for two consecutive weeks. The declaration of forfeiture shall be published once. [1988 c 86 § 5; 1985 c 237 § 5.]

61.30.060 Notice of intent to forfeit—Declaration of forfeiture—Time limitations. The notice of intent to forfeit shall be given not later than ten days after it is recorded. The declaration of forfeiture shall be given not later than three days after it is recorded. Either required notice may be given before it is recorded, but the declaration of forfeiture may not be given before the time for cure has expired. Notices which are served or mailed are given for the purposes of this section when served or mailed. Notices which must be posted and published as provided in RCW 61.30.050(2)(b) are given for the purposes of this section when both posted and first published. [1988 c 86 § 6; 1985 c 237 § 6.]

61.30.070 Notice of intent to forfeit—Declaration of forfeiture—Contents. (1) The notice of intent to forfeit shall contain the following:

- (a) The name, address, and telephone number of the seller and, if any, the seller's agent or attorney giving the notice;
- (b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;
- (c) A legal description of the property;
- (d) A description of each default under the contract on which the notice is based;
- (e) A statement that the contract will be forfeited if all defaults are not cured by a date stated in the notice which is not less than ninety days after the notice of intent to forfeit is recorded or any longer period specified in the contract or other agreement with the seller;
- (f) A statement of the effect of forfeiture, including, to the extent applicable that: (i) All right, title, and interest in the property of the purchaser and, to the extent elected by the seller, of all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in the property shall be terminated; (ii) the purchaser's rights under the contract shall be canceled; (iii)

all sums previously paid under the contract shall belong to and be retained by the seller or other person to whom paid and entitled thereto; (iv) all of the purchaser's rights in all improvements made to the property and in unharvested crops and timber thereon shall belong to the seller; and (v) the purchaser and all other persons occupying the property whose interests are forfeited shall be required to surrender possession of the property, improvements, and unharvested crops and timber to the seller ten days after the declaration of forfeiture is recorded;

(g) An itemized statement or, to the extent not known at the time the notice of intent to forfeit is given or recorded, a reasonable estimate of all payments of money in default and, for defaults not involving the failure to pay money, a statement of the action required to cure the default;

(h) An itemized statement of all other payments, charges, fees, and costs, if any, or, to the extent not known at the time the notice of intent is given or recorded, a reasonable estimate thereof, that are or may be required to cure the defaults;

(i) A statement that the person to whom the notice is given may have the right to contest the forfeiture, or to seek an extension of time to cure the default if the default does not involve a failure to pay money, or both, by commencing a court action by filing and serving the summons and complaint before the declaration of forfeiture is recorded;

(j) A statement that the person to whom the notice is given may have the right to request a court to order a public sale of the property; that such public sale will be ordered only if the court finds that the fair market value of the property substantially exceeds the debt owed under the contract and any other liens having priority over the seller's interest in the property; that the excess, if any, of the highest bid at the sale over the debt owed under the contract will be applied to the liens eliminated by the sale and the balance, if any, paid to the purchaser; that the court will require the person who requests the sale to deposit the anticipated sale costs with the clerk of the court; and that any action to obtain an order for public sale must be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded;

(k) A statement that the seller is not required to give any person any other notice of default before the declaration which completes the forfeiture is given, or, if the contract or other agreement requires such notice, the identification of such notice and a statement of to whom, when, and how it is required to be given; and

(1) Any additional information required by the contract or other agreement with the seller.

(2) If the default is not cured before the time for cure has expired, the seller may forfeit the contract by giving and recording a declaration of forfeiture which contains the following:

(a) The name, address, and telephone number of the seller;

(b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;

(c) A legal description of the property;

(d) To the extent applicable, a statement that all the purchaser's rights under the contract are canceled and all

right, title, and interest in the property of the purchaser and of all persons claiming an interest in all or any portion of the property through the purchaser or which is otherwise subordinate to the seller's interest in the property are terminated except to the extent otherwise stated in the declaration of forfeiture as to persons or claims named, identified, or described;

(e) To the extent applicable, a statement that all persons whose rights in the property have been terminated and who are in or come into possession of any portion of the property (including improvements and unharvested crops and timber) are required to surrender such possession to the seller not later than a specified date, which shall not be less than ten days after the declaration of forfeiture is recorded or such longer period provided in the contract or other agreement with the seller;

(f) A statement that the forfeiture was conducted in compliance with all requirements of this chapter in all material respects and applicable provisions of the contract;

(g) A statement that the purchaser and any person claiming any interest in the purchaser's rights under the contract or in the property who are given the notice of intent to forfeit and the declaration of forfeiture have the right to commence a court action to set the forfeiture aside by filing and serving the summons and complaint within sixty days after the date the declaration of forfeiture is recorded if the seller did not have the right to forfeit the contract or fails to comply with this chapter in any material respect; and

(h) Any additional information required by the contract or other agreement with the seller.

(3) The seller may include in either or both required notices any additional information the seller elects to include which is consistent with this chapter and with the contract or other agreement with the seller. [1988 c 86 § 7; 1985 c 237 § 7.]

61.30.080 Failure to give required notices. (1) If the seller fails to give any required notice within the time required by this chapter, the seller may record and give a subsequent notice of intent to forfeit or declaration of forfeiture, as applicable. Any such subsequent notice shall (a) include revised dates and information to the extent necessary to conform to this chapter as if the superseded notice had not been given or recorded; (b) state that it supersedes the notice being replaced; and (c) render void the previous notice which it replaces.

(2) If the seller fails to give the notice of intent to forfeit to all persons whose interests the seller desires to forfeit or to record such notice as required by this chapter, and if the declaration of forfeiture has not been given or recorded, the seller may give and record a new set of notices as required by this chapter. However, the new notices shall contain a statement that they supersede and replace the earlier notices and shall provide a new time for cure.

(3) If the seller fails to give any required notice to all persons whose interests the seller desires to forfeit or to record such notice as required by this chapter, and if the declaration of forfeiture has been given or recorded, the seller may apply for a court order setting aside the forfeiture previously made, and to the extent such order is entered, the seller may proceed as if no forfeiture had been commenced.

However, no such order may be obtained without joinder and service upon the persons who were given the required notices and all other persons whose interests the seller desires to forfeit. [1988 c 86 § 8; 1985 c 237 § 8.]

61.30.090 Acceleration of payments—Cure of default. (1) Even if the contract contains a provision allowing the seller, because of a default in the purchaser's obligations under the contract, to accelerate the due date of some or all payments to be made or other obligations to be performed by the purchaser under the contract, the seller may not require payment of the accelerated payments or performance of the accelerated obligations as a condition to curing the default in order to avoid forfeiture except to the extent the payments or performance would be due without the acceleration. This subsection shall not apply to an acceleration because of a transfer, encumbrance, or conveyance of any or all of the purchaser's interest in any portion or all of the property if the contract being forfeited contains a provision accelerating the unpaid balance because of such transfer, encumbrance, or conveyance and such provision is enforceable under applicable law.

(2) All persons described in RCW 61.30.040 (1) and (2), regardless of whether given the notice of intent to forfeit, and any guarantor of or any surety for the purchaser's performance may cure the default. These persons may cure the default at any time before expiration of the time for cure and may act alone or in any combination. Any person having a lien of record against the property which would be eliminated in whole or in part by the forfeiture and who cures the purchaser's default pursuant to this section shall have included in its lien all payments made to effect such cure, including interest thereon at the rate specified in or otherwise applicable to the obligations secured by such lien.

(3) The seller may, but shall not be required to, accept tender of cure after the expiration of the time for cure and before the declaration of forfeiture is recorded. The seller may accept a partial cure. If the tender of such partial cure to the seller or the seller's agent or attorney is not accompanied by a written statement of the person making the tender acknowledging that such payment or other action does not fully cure the default, the seller shall notify such person in writing of the insufficiency and the amount or character thereof, which notice shall include an offer to refund any partial tender of money paid to the seller or the seller's agent or attorney upon written request. The notice of insufficiency may state that, by statute, such request must be made by a specified date, which date may not be less than ninety days after the notice of insufficiency is served or mailed. The request must be made in writing and delivered or mailed to the seller or the person who gave the notice of insufficiency or the notice of intent to forfeit and, if the notice of insufficiency properly specifies a date by which such request must be made, by the date so specified. The seller shall refund such amount promptly following receipt of such written request, if timely made, and the seller shall be liable to the person to whom such amount is due for that person's reasonable attorneys' fees and other costs incurred in an action brought to recover such amount in which such refund or any portion thereof is found to have been improperly

withheld. If the seller's written notice of insufficiency is not given to the person making the tender at least ten days before the expiration of the time for cure, then regardless of whether the tender is accepted the time for cure shall be extended for ten days from the date the seller's written notice of insufficiency is given. The seller shall not be required to extend the time for cure more than once even though more than one insufficient tender is made.

(4) Except as provided in this subsection, a timely tender of cure shall reinstate the contract. If a default that entitles the seller to forfeit the contract is not described in a notice of intent to forfeit previously given and the seller gives a notice of intent to forfeit concerning that default, timely cure of a default described in a previous notice of intent to forfeit shall not limit the effect of the subsequent notice.

(5) If the default is cured and a fulfillment deed is not given to the purchaser, the seller or the seller's agent or attorney shall sign, acknowledge, record, and deliver or mail to the purchaser and, if different, the person who made the tender a written statement that the contract is no longer subject to forfeiture under the notice of intent to forfeit previously given, referring to the notice of intent to forfeit by its recording number. A seller who fails within thirty days of written demand to give and record the statement required by this subsection, if such demand specifies the penalties in this subsection, is liable to the person who cured the default for the greater of five hundred dollars or actual damages, if any, and for reasonable attorneys' fees and other costs incurred in an action to recover such amount or damages.

(6) Any person curing or intending to cure any default shall have the right to request any court of competent jurisdiction to determine the reasonableness of any attorneys' fees which are included in the amount required to cure, and in making such determination the court may award the prevailing party its reasonable attorneys' fees and other costs incurred in the action. An action under this subsection shall not forestall any forfeiture or affect its validity. [1988 c 86 § 9; 1985 c 237 § 9.]

61.30.100 Effect of forfeiture. (1) The recorded and sworn declaration of forfeiture shall be prima facie evidence of the extent of the forfeiture and compliance with this chapter and, except as otherwise provided in RCW 61.30.040 (1) and (2), conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

(2) Except as otherwise provided in this chapter or the contract or other agreement with the seller, forfeiture of a contract under this chapter shall have the following effects:

(a) The purchaser, and all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in the property who were given the required notices pursuant to this chapter, shall have no further rights in the contract or the property and no person shall have any right, by statute or otherwise, to redeem the property;

(b) All sums previously paid under the contract by or on behalf of the purchaser shall belong to and be retained by the seller or other person to whom paid; and

(c) All of the purchaser's rights in all improvements made to the property and in unharvested crops and timber

thereon at the time the declaration of forfeiture is recorded shall be forfeited to the seller.

(3) The seller shall be entitled to possession of the property ten days after the declaration of forfeiture is recorded or any longer period provided in the contract or any other agreement with the seller. The seller may proceed under chapter 59.12 RCW to obtain such possession. Any person in possession who fails to surrender possession when required shall be liable to the seller for actual damages caused by such failure and for reasonable attorneys' fees and costs of the action.

(4) After the declaration of forfeiture is recorded, the seller shall have no claim against and the purchaser shall not be liable to the seller for any portion of the purchase price unpaid or for any other breach of the purchaser's obligations under the contract, except for damages caused by waste to the property to the extent such waste results in the fair market value of the property on the date the declaration of forfeiture is recorded being less than the unpaid monetary obligations under the contract and all liens or contracts having priority over the seller's interest in the property. [1988 c 86 § 10; 1985 c 237 § 10.]

61.30.110 Forfeiture may be restrained or enjoined.

(1) The forfeiture may be restrained or enjoined or the time for cure may be extended by court order only as provided in this section. A certified copy of any restraining order or injunction may be recorded in each county in which any part of the property is located.

(2) Any person entitled to cure the default may bring or join in an action under this section. No other person may bring such an action without leave of court first given for good cause shown. Any such action shall be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's agent or attorney, if any, who gave the notice of intent to forfeit. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located. A court may preliminarily enjoin the giving and recording of the declaration of forfeiture upon a prima facie showing of the grounds set forth in this section for a permanent injunction. If the court issues an order restraining or enjoining the forfeiture then until such order expires or is vacated or the court otherwise permits the seller to proceed with the forfeiture, the declaration of forfeiture shall not be given or recorded. However, the commencement of the action shall not of itself extend the time for cure.

(3) The forfeiture may be permanently enjoined only when the person bringing the action proves that there is no default as claimed in the notice of intent to forfeit or that the purchaser has a claim against the seller which releases, discharges, or excuses the default claimed in the notice of intent to forfeit, including by offset, or that there exists any material noncompliance with this chapter. The time for cure may be extended only when the default alleged is other than the failure to pay money, the nature of the default is such that it cannot practically be cured within the time stated in the notice of intent to forfeit, action has been taken and is diligently being pursued which would cure the default, and

any person entitled to cure is ready, willing, and able to timely perform all of the purchaser's other contract obligations. [1988 c 86 § 11; 1985 c 237 § 11.]

61.30.120 Sale of property in lieu of forfeiture. (1) Except for a sale ordered incident to foreclosure of the contract as a mortgage, a public sale of the property in lieu of the forfeiture may be ordered by the court only as provided in this section. Any person entitled to cure the default may bring or join in an action seeking an order of public sale in lieu of forfeiture. No other person may bring such an action without leave of court first given for good cause shown.

(2) An action under this section shall be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's agent or attorney, if any, who gave the notice of intent to forfeit. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located. After the commencement of an action under this section and before its dismissal, the denial of a request for a public sale, or the vacation or expiration of an order for a public sale, the declaration of forfeiture shall not be given or recorded. However, commencement of the action shall not of itself extend the time for cure.

(3) If the court finds the then fair market value of the property substantially exceeds the unpaid and unperformed obligations secured by the contract and any other liens having priority over the seller's interest in the property, the court may require the property to be sold after the expiration of the time for cure in whole or in parcels to pay the costs of the sale and satisfy the amount the seller is entitled to be paid from the sale proceeds. Such sale shall be for cash to the highest bidder at a public sale by the sheriff at a courthouse of the county in which the property or any contiguous or noncontiguous portion thereof is located. The order requiring a public sale of the property shall specify the amount which the seller is entitled to be paid from the sale proceeds, which shall include all sums unpaid under the contract, irrespective of the due dates thereof, and such other costs and expenses to which the seller is entitled as a result of the purchaser's default under the contract, subject to any offsets or damages to which the purchaser is entitled. The order shall require any person requesting the sale to deposit with the clerk of the court, or such other person as the court may direct, the amount the court finds will be necessary to pay all of the costs and expenses of advertising and conducting the sale, including the notices to be given under subsections (4) and (5) of this section. The court shall require such deposit to be made within seven days, and if not so made the court shall vacate its order of sale. Except as provided in subsections (6) and (8) of this section, the sale shall eliminate the interests of the persons given the notice of intent to forfeit to the same extent that such interests would have been eliminated had the seller's forfeiture been effected pursuant to such notice.

(4) The sheriff shall endorse upon the order the time and date when the sheriff receives it and shall forthwith post and publish the notice of sale specified in this subsection and sell the property, or so much thereof as may be necessary to

discharge the amount the seller is entitled to be paid as specified in the court's order of sale. The notice of sale shall be printed or typed and contain the following information:

(a) A statement that the court has directed the sheriff to sell the property described in the notice of sale and the amount the seller is entitled to be paid from the sale proceeds as specified in the court's order;

(b) The caption, cause number, and court in which the order was entered;

(c) A legal description of the property to be sold, including the street address if any;

(d) The date and recording number of the contract;

(e) The scheduled date, time, and place of the sale;

(f) If the time for cure has not expired, the date it will expire and that the purchaser and other persons authorized to cure have the right to avoid the sale ordered by the court by curing the defaults specified in the notice of intent to forfeit before the time for cure expires;

(g) The right of the purchaser to avoid the sale ordered by the court by paying to the sheriff, at any time before the sale, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale, as specified in the court's order; and

(h) A statement that unless otherwise provided in the contract between seller and purchaser or other agreement with the seller, no person shall have any right to redeem the property sold at the sale.

The notice of sale shall be given by posting a copy thereof for a period of not less than four weeks prior to the date of sale in three public places in each county in which the property or any portion thereof is located, one of which shall be at the front door of the courthouse for the superior court of each such county, and one of which shall be placed in a conspicuous place on the property. Additionally, the notice of sale shall be published once a week for two consecutive weeks in the newspaper or newspapers prescribed for published notices in RCW 61.30.050(2)(b). The sale shall be scheduled to be held not more than seven days after the expiration of (i) the periods during which the notice of sale is required to be posted and published or (ii) the time for cure, whichever is later; however, the seller may, but shall not be required to, permit the sale to be scheduled for a later date. Upon the completion of the sale, the sheriff shall deliver a sheriff's deed to the property sold to the successful bidder.

(5) Within seven days following the date the notice of sale is posted on the property, the seller shall, by the means described in RCW 61.30.050(2), give a copy of the notice of sale to all persons who were given the notice of intent to forfeit, except the seller need not post or publish the notice of sale.

(6) Any person may bid at the sale. If the purchaser is the successful bidder, the sale shall not affect any interest in the property which is subordinate to the contract. If the seller is the successful bidder, the seller may offset against the price bid the amount the seller is entitled to be paid as specified in the court's order. Proceeds of such sale shall be first applied to any costs and expenses of sale incurred by the sheriff and the seller in excess of the deposit referred to in subsection (3) of this section, and next to the amount the seller is entitled to be paid as specified in the court's order.

Any proceeds in excess of the amount necessary to pay such costs, expenses and amount, less the clerk's filing fee, shall be deposited with the clerk of the superior court of the county in which the sale took place, unless such surplus is less than the clerk's filing fee, in which event such excess shall be paid to the purchaser. The clerk shall index such funds under the name of the purchaser. Interests in or liens or claims of liens against the property eliminated by the sale shall attach to such surplus in the order of priority that they had attached to the property. The clerk shall not disburse the surplus except upon order of the superior court of such county, which order shall not be entered less than ten days following the deposit of the funds with the clerk.

(7) In addition to the right to cure the default within the time for cure, the purchaser shall have the right to satisfy its obligations under the contract and avoid any public sale ordered by the court by paying to the sheriff, at any time before the sale, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale as specified in the court's order plus the amount of any costs and expenses of the sale incurred by the sheriff and the seller in excess of the deposit referred to in subsection (3) of this section. If the purchaser satisfies its obligations as provided in this subsection, the seller shall deliver its fulfillment deed to the purchaser.

(8) Unless otherwise provided in the contract or other agreement with the seller, after the public sale provided in this section no person shall have any right, by statute or otherwise, to redeem the property and, subject to the rights of persons unaffected by the sale, the purchaser at the public sale shall be entitled to possession of the property ten days after the date of the sale and may proceed under chapter 59.12 RCW to obtain such possession.

(9) A public sale effected under this section shall satisfy the obligations secured by the contract, regardless of the sale price or fair value, and no deficiency decree or other judgment may thereafter be obtained on such obligations. [1988 c 86 § 12; 1985 c 237 § 12.]

61.30.130 Forfeiture may proceed upon expiration of judicial order—Court may award attorneys' fees or impose conditions—Venue. (1) If an order restraining or enjoining the forfeiture or an order of sale under RCW 61.30.120 expires or is dissolved or vacated at least ten days before expiration of the time for cure, the seller may proceed with the forfeiture under this chapter if the default is not cured at the end of the time for cure. If any such order expires or is dissolved or vacated or such other final disposition is made at any time later than stated in the first sentence of this subsection, the seller may proceed with the forfeiture under this chapter if the default is not cured, except the time for cure shall be extended for ten days after the final disposition or the expiration of, or entry of the order dissolving or vacating, the order.

(2) In actions under RCW 61.30.110 and 61.30.120, the court may award reasonable attorneys' fees and costs of the action to the prevailing party, except for such fees and costs incurred by a person requesting a public sale of the property.

(3) In actions under RCW 61.30.110 and 61.30.120, on the seller's motion the court may (a) require the person commencing the action to provide a bond or other security

against all or a portion of the seller's damages and (b) impose other conditions, the failure of which may be cause for entry of an order dismissing the action and dissolving or vacating any restraining order, injunction, or other order previously entered.

(4) Actions under RCW 61.30.110, 61.30.120, or 61.30.140 shall be brought in the superior court of the county where the property is located or, if the property is located in more than one county, then in any of such counties, regardless of whether the property is contiguous or noncontiguous. [1988 c 86 § 13; 1985 c 237 § 13.]

61.30.140 Action to set aside forfeiture. (1) An action to set aside a forfeiture not otherwise void under RCW 61.30.040(1) may be commenced only after the declaration of forfeiture has been recorded and only as provided in this section, and regardless of whether an action was previously commenced under RCW 61.30.110.

(2) An action to set aside the forfeiture permitted by this section may be commenced only by a person entitled to be given the required notices under RCW 61.30.040 (1) and (2). For all persons given the required notices in accordance with this chapter, such an action shall be commenced by filing and serving the summons and complaint not later than sixty days after the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's attorney in fact, if any, who signed the declaration of forfeiture. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located.

(3) The court may require that all payments specified in the notice of intent shall be paid to the clerk of the court as a condition to maintaining an action to set aside the forfeiture. All payments falling due during the pendency of the action shall be paid to the clerk of the court when due. These payments shall be calculated without regard to any acceleration provision in the contract (except an acceleration because of a transfer, encumbrance, or conveyance of the purchaser's interest in the property when otherwise enforceable) and without regard to the seller's contention the contract has been duly forfeited and shall not include the seller's costs and fees of the forfeiture. The court may make orders regarding the investment or disbursement of these funds and may authorize payments to third parties instead of the clerk of the court.

(4) The forfeiture shall not be set aside unless (a) the rights of bona fide purchasers for value and of bona fide encumbrancers for value of the property would not thereby be adversely affected and (b) the person bringing the action establishes that the seller was not entitled to forfeit the contract at the time the seller purported to do so or that the seller did not materially comply with the requirements of this chapter.

(5) If the purchaser or other person commencing the action establishes a right to set aside the forfeiture, the court shall award the purchaser or other person commencing the action actual damages, if any, and may award the purchaser or other person its reasonable attorneys' fees and costs of the action. If the court finds that the forfeiture was conducted in compliance with this chapter, the court shall award the

seller actual damages, if any, and may award the seller its reasonable attorneys' fees and costs of the action.

(6) The seller is entitled to possession of the property and to the rents, issues, and profits thereof during the pendency of an action to set aside the forfeiture: PROVIDED, That the court may provide that possession of the property be delivered to or retained by the purchaser or some other person and may make other provisions for the rents, issues, and profits. [1988 c 86 § 14; 1985 c 237 § 14.]

61.30.150 False swearing—Penalty—Failure to comply with chapter—Liability. (1) Whoever knowingly swears falsely to any statement required by this chapter to be sworn is guilty of perjury and shall be liable for the statutory penalties therefor.

(2) A seller who records a declaration of forfeiture with actual knowledge or reason to know of a material failure to comply with any requirement of this chapter is liable to any person whose interest in the property or the contract, or both, has been forfeited without material compliance with this chapter for actual damages and actual attorneys' fees and costs of the action and, in the court's discretion, exemplary damages. [1988 c 86 § 15; 1985 c 237 § 15.]

61.30.160 Priority of actions under chapter. An action brought under RCW 61.30.110, 61.30.120, or 61.30.140 shall take precedence over all other civil actions except those described in RCW 59.12.130. [1985 c 237 § 16.]

61.30.900 Short title. This chapter may be known and cited as the real estate contract forfeiture act. [1985 c 237 § 17.]

61.30.905 Severability—1985 c 237. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 237 § 19.]

61.30.910 Effective date—Application—1985 c 237. This act shall take effect January 1, 1986, and shall apply to all real estate contract forfeitures initiated on or after that date, regardless of when the real estate contract was made. [1985 c 237 § 21.]

61.30.911 Application—1988 c 86. This act applies to all real estate contract forfeitures initiated on or after June 9, 1988, regardless of when the real estate contract was made. [1988 c 86 § 16.]

Chapter 61.34

EQUITY SKIMMING

Sections

61.34.010	Legislative findings.
61.34.020	Definitions.
61.34.030	Criminal penalty.
61.34.040	Application of consumer protection act.
61.34.900	Severability—1988 c 33.

61.34.010 Legislative findings. The legislature finds that persons are engaging in patterns of conduct which defraud innocent homeowners of their equity interest or other value in residential dwellings under the guise of a purchase of the owner's residence but which is in fact a device to convert the owner's equity interest or other value in the residence to an equity skimmer, who fails to make payments, diverts the equity or other value to the skimmer's benefit, and leaves the innocent homeowner with a resulting financial loss or debt.

The legislature further finds this activity of equity skimming to be contrary to the public policy of this state and therefore establishes the crime of equity skimming to address this form of real estate fraud and abuse. [1988 c 33 § 1.]

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

(1) "Pattern of equity skimming" means engaging in a least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(2) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.

(3) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(4) An "act of equity skimming" occurs when:

(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use. [1988 c 33 § 4.]

61.34.030 Criminal penalty. Any person who wilfully engages in a pattern of equity skimming is guilty of a class B felony under RCW 9A.20.021. Equity skimming shall be classified as a level II offense under chapter 9.94A RCW, and each act of equity skimming found beyond a reasonable doubt or admitted by the defendant upon a plea of guilty to be included in the pattern of equity skimming, shall be a separate current offense for the purpose of determining the sentence range for each current offense pursuant to RCW 9.94A.400(1)(a). [1988 c 33 § 2.]

61.34.040 Application of consumer protection act. In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds and declares that equity skimming substantially affects the public interest. The commission by any person of an act of equity skimming or a pattern of equity skimming is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. [1988 c 33 § 3.]

61.34.900 Severability—1988 c 33. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 33 § 6.]

Title 62A

UNIFORM COMMERCIAL CODE

Articles

- 1 General provisions.
- 2 Sales.
- 2A Leases.
- 3 Negotiable instruments.
- 4 Bank deposits and collections.
- 4A Funds transfers.
- 5 Letters of credit.
- 7 Warehouse receipts, bills of lading and other documents of title.
- 8 Investment securities.
- 9 Secured transactions; sales of accounts, contract rights and chattel paper.
- 10 Effective date and repealer.
- 11 Effective date and transition provisions.

Reviser's note: The Uniform Commercial Code was enacted by 1965 ex.s. c 157 and became effective at midnight on June 30, 1967. The 1972 amendments to the Uniform Commercial Code recommended by the National Conference of Commissioners on Uniform State Laws were enacted by 1981 c 41 and become effective at midnight on June 30, 1982.

The style of the numbers assigned in the Commercial Code differs from the standard RCW numbering system. The purpose of this variance is to enable ready comparison with the laws and annotations of other states which have adopted the Uniform Commercial Code and to conform to the recommendations of the National Conference of Commissioners on Uniform State Laws.

As enacted and amended by the Washington Legislature, the Uniform Commercial Code is divided into eleven Articles, which are subdivided into a number of Parts. The first section in Article 1, Part 1 of the Commercial Code is numbered 1-101, the second section in Article 1, Part 1 is numbered 1-102, the first section in Article 1, Part 2 is numbered 1-201, the first section in Article 2, Part 1 is numbered 2-101, etc.

We have assigned Title 62A RCW for the Uniform Commercial Code but have retained its uniform numbering; thus in this title, section 1-101 of the Commercial Code becomes RCW 62A.1-101; section 1-102 becomes RCW 62A.1-102; section 1-201 becomes RCW 62A.1-201; section 2-101 becomes RCW 62A.2-101, and so on.

Cashing checks, drafts, and state warrants for state officers and employees—Discretionary—Conditions—Procedure upon dishonor: RCW 43.08.180.

Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivative—Scope—Effective date: RCW 70.54.120.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Motor vehicle certificate of ownership, transfer, perfection of security interest, etc.: Chapter 46.12 RCW.

express warranties: Chapter 19.118 RCW.

Uniform legislation commission: Chapter 43.56 RCW.

Article 1 GENERAL PROVISIONS

Sections

PART 1 SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

- 62A.1-101 Short title.
- 62A.1-102 Purposes; rules of construction; variation by agreement.
- 62A.1-103 Supplementary general principles of law applicable.
- 62A.1-104 Construction against implicit repeal.
- 62A.1-105 Territorial application of the title; parties' power to choose applicable law.
- 62A.1-106 Remedies to be liberally administered.
- 62A.1-107 Waiver or renunciation of claim or right after breach.
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- 62A.1-109 Section captions.
- 62A.1-110 Art dealers and artists—Contracts—Duties, etc.

PART 2 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- 62A.1-201 General definitions.
- 62A.1-202 Prima facie evidence by third party documents.
- 62A.1-203 Obligation of good faith.
- 62A.1-204 Time; reasonable time; "seasonably"
- 62A.1-205 Course of dealing and usage of trade.
- 62A.1-206 Statute of frauds for kinds of personal property not otherwise covered.
- 62A.1-207 Performance or acceptance under reservation of rights.
- 62A.1-208 Option to accelerate at will.

PART 1 SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

62A.1-101 Short title. This Title shall be known and may be cited as Uniform Commercial Code. [1965 ex.s. c 157 § 1-101.]

62A.1-102 Purposes; rules of construction; variation by agreement. (1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are (a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such

obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [1965 ex.s. c 157 § 1-102. Cf. former RCW sections: (i) RCW 22.04.580; 1913 c 99 § 57; RRS § 3643. (ii) RCW 23.80.190; 1939 c 100 § 19; RRS § 3803-119. (iii) RCW 63.04.745; 1925 ex.s. c 142 § 74; RRS § 5836-74; formerly RCW 63.04.770. (iv) RCW 81.32.521; 1961 c 14 § 81.32.521; prior: 1915 c 159 § 52; RRS § 3698; formerly RCW 81.32.610.]

Code to be liberally construed: RCW 1.12.010.

Number and gender—Interpretation: RCW 1.12.050.

62A.1-103 Supplementary general principles of law applicable. Unless displaced by the particular provisions of this Title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. [1965 ex.s. c 157 § 1-103. Cf. former RCW sections: (i) RCW 22.04.570; 1913 c 99 § 56; RRS § 3642. (ii) RCW 23.80.180; 1939 c 100 § 18; RRS § 3803-118; formerly RCW 23.20.190. (iii) RCW 62.01.196; 1955 c 35 § 196; RRS § 3586. (iv) RCW 63.04.030; 1925 ex.s. c 142 § 2; RRS § 5836-2. (v) RCW 81.32.511; 1961 c 14 § 81.32.511; prior: 1915 c 159 § 51; RRS § 3697; formerly RCW 81.32.600.]

Application of common law: RCW 4.04.010.

62A.1-104 Construction against implicit repeal.

This Title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1965 ex.s. c 157 § 1-104.]

62A.1-105 Territorial application of the title; parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Applicability of the Article on Letters of Credit. RCW 62A.5-116.

Applicability of the Article on Investment Securities. RCW 62A.8-110.

Perfection provisions of the Article on Secured Transactions. RCW 62A.9-103. [1997 c 56 § 19; 1995 c 48 § 54. Prior: 1993 c 395 § 6-102; 1993 c 230 § 2A-601; 1981 c 41 § 1; 1965 ex.s. c 157 § 1-105.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1993 c 230: See RCW 62A.11-110.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.1-106 Remedies to be liberally administered.

(1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect. [1965 ex.s. c 157 § 1-106. Cf. former: RCW 63.04.730; 1925 ex.s. c 142 § 72; RRS § 5836-72.]

62A.1-107 Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1965 ex.s. c 157 § 1-107. Cf. former RCW sections: (i) RCW 62.01.119(3); 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120(2); 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510. (iii) RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

62A.1-108 Severability. If any provision or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable. [1965 ex.s. c 157 § 1-108. Cf. former RCW 62.98.030; 1955 c 35 § 62.98.030.]

62A.1-109 Section captions. Section captions are parts of this Title. [1965 ex.s. c 157 § 1-109. Cf. former RCW 62.98.020; 1955 c 35 § 62.98.020.]

Reviser's note: Sections in this title that were amended or added after the original enactment of this title by chapter 157, Laws of 1965 ex. sess. may have section captions supplied by the code reviser as authorized under RCW 1.08.015(2)(l).

62A.1-110 Art dealers and artists—Contracts—Duties, etc. Chapter 18.110 RCW shall control over any conflicting provision of this title. [1981 c 33 § 7.]

PART 2
GENERAL DEFINITIONS AND PRINCIPLES
OF INTERPRETATION

62A.1-201 General definitions. Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205, RCW 62A.2-208, and RCW 62A.2A-207). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous" Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when

(a) he or she has actual knowledge of it; or

(b) he or she has received a notice or notification of it;

or

(c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his or her attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment in any event is subject to the provisions on consignment sales (RCW 62A.2-326).

Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) The lessee has an option to renew the lease or to become the owner of the goods;

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or

(f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent

is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value" Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-210, and RCW 62A.4-211) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. [1996 c 77 § 1. Prior: 1993 c 230 § 2A-602; 1993 c 229 § 1; 1992 c 134 § 14; 1990 c 228 § 1; 1986 c 35 § 53; 1981 c 41 § 2; 1965 ex.s. c 157 § 1-201.]

Reviser's note: This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.

HEREIN SUBD.	COMPARE FORMER
(1)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(2)	None
(3)	None
(4)	RCW:(i) 30.52.010 (ii) 62.01.191
(5)	RCW 62.01.191
(6)	RCW 81.32.011'
(7)	None
(8)	None
(9)	RCW 61.20.010
(10)	None
(11)	RCW:(i) 63.04.040 (ii) 63.04.720
(12)	None
(13)	RCW 63.04.755(1)
(14)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(15)	RCW 63.04.755(1)
(16)	RCW 63.04.755(1)
(17)	RCW:(i) 22.04.585(1) (ii) 63.04.060 (iii) 63.04.070 (iv) 63.04.755(1)
(18)	None
(19)	RCW:(i) 22.04.585(2) (ii) 23.80.220(2) (iii) 63.04.755(2) (iv) 81.32.531(2)
(20)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 81.32.531(1)
(21)	None
(22)	None
(23)	RCW 63.04.755(3)
(24)	RCW 62.01.006(5)
(25)	RCW 62.01.056
(26)	None
(27)	None
(28)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(29)	None
(30)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(31)	None
(32)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(33)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(34)	None
(35)	None

(36)	None
(37)	RCW 61.20.010
(38)	None
(39)	None
(40)	None
(41)	None
(42)	None
(43)	None
(44)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.025 (v) 62.01.026 (vi) 62.01.027 (vii) 62.01.191 (viii) 63.04.755(1) (ix) 81.32.531(1)
(45)	RCW:(i) 22.04.020 (ii) 63.04.755(1)
(46)	RCW 62.01.191

"The repeal of RCW sections 81.32.010 through 81.32.561 ". . . shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050)." Section 10-102(a)(xvii), chapter 157, Laws of 1965 ex. sess.

Effective date—1993 c 230: See RCW 62A.11-110.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

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

Effective date—1981 c 41: See RCW 62A.11-101.

62A.1-202 Prima facie evidence by third party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [1965 ex.s. c 157 § 1-202.]

Official documents as evidence: RCW 5.40.020, 5.40.030, 5.40.040.

Uniform Business Records as Evidence Act: Chapter 5.45 RCW.

62A.1-203 Obligation of good faith. Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement. [1965 ex.s. c 157 § 1-203.]

62A.1-204 Time; reasonable time; "seasonably". (1) Whenever this Title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. [1965 ex.s. c 157 § 1-204.]

62A.1-205 Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place,

vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. [1965 ex.s. c 157 § 1-205. Cf. former RCW sections: (i) RCW 63.04.100(1); 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.160(5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (iii) RCW 63.04.190(2); 1925 ex.s. c 142 § 18; RRS § 5836-18. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

62A.1-206 Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-113) nor to security agreements (RCW 62A.9-203). [1995 c 48 § 55; 1965 ex.s. c 157 § 1-206. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Statute of frauds: Chapter 19.36 RCW.

62A.1-207 Performance or acceptance under reservation of rights. (1) A party who, with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(2) Subsection (1) of this section shall not apply to an accord and satisfaction. [1993 c 229 § 2; 1965 ex.s. c 157 § 1-207.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.1-208 Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. [1965 ex.s. c 157 § 1-208. Cf. former RCW 61.08.080; Code 1881 § 1998; 1879 p 106 § 13; RRS § 1111.]

**Article 2
SALES**

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PART 1

SHORT TITLE, GENERAL CONSTRUCTION
AND SUBJECT MATTER

62A.2-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Sales. [1965 ex.s. c 157 § 2-101.]

62A.2-102 Scope; certain security and other transactions excluded from this Article. Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. [1965 ex.s. c 157 § 2-102. Cf. former RCW 63.04.750; 1925 ex.s. c 142 § 75; RRS § 5836-75.]

62A.2-103 Definitions and index of definitions. (1) In this Article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance."	RCW 62A.2-606.
"Banker's credit."	RCW 62A.2-325.
"Between merchants."	RCW 62A.2-104.
"Cancellation."	RCW 62A.2-106(4).
"Commercial unit."	RCW 62A.2-105.
"Confirmed credit."	RCW 62A.2-325.
"Conforming to contract."	RCW 62A.2-106.
"Contract for sale."	RCW 62A.2-106.
"Cover."	RCW 62A.2-712.
"Entrusting."	RCW 62A.2-403.
"Financing agency."	RCW 62A.2-104.
"Future goods."	RCW 62A.2-105.

"Goods."	RCW 62A.2-105.
"Identification."	RCW 62A.2-501.
"Installment contract."	RCW 62A.2-612.
"Letter of credit."	RCW 62A.2-325.
"Lot."	RCW 62A.2-105.
"Merchant."	RCW 62A.2-104.
"Overseas."	RCW 62A.2-323.
"Person in position of seller."	RCW 62A.2-707.
"Present sale."	RCW 62A.2-106.
"Sale."	RCW 62A.2-106.
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Termination."	RCW 62A.2-106.

(3) The following definitions in other Articles apply to this Article:

"Check."	RCW 62A.3-104.
"Consignee."	RCW 62A.7-102.
"Consignor."	RCW 62A.7-102.
"Consumer goods."	RCW 62A.9-109.
"Dishonor."	*RCW 62A.3-507.
"Draft."	RCW 62A.3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 2-103. Cf. former RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

*Reviser's note: RCW 62A.3-507 was repealed by 1993 c 229 § 76, effective July 1, 1994.

62A.2-104 Definitions: "Merchant"; "between merchants"; "financing agency". (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. [1965 ex.s. c 157 § 2-104. Cf. former RCW sections: (i) RCW 63.04.160(2), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (ii) RCW 63.04.170(c); 1925 ex.s. c 142 § 16; RRS § 5836-16. (iii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71. (v) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440. (vi) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.2-105 Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial unit". (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (RCW 62A.2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. [1965 ex.s. c 157 § 2-105. Subds. (1), (2), (3), (4), cf. former RCW sections: (i) RCW 63.04.060; 1925 ex.s. c 142 § 5; RRS § 5836-5. (ii) RCW 63.04.070; 1925 ex.s. c 142 § 6; RRS § 5836-6. (iii) RCW 63.04.755; 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

62A.2-106 Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation". (1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (RCW 62A.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are dis-

charged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. [1965 ex.s. c 157 § 2-106. Subd. (1) cf. former RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. Subd. (2) cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.450; 1925 ex.s. c 142 § 44; RRS § 5836-44. (iii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-107 Goods to be severed from realty: Recording. (1) A contract for the sale of minerals or the like including oil and gas or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. [1981 c 41 § 3; 1965 ex.s. c 157 § 2-107. Cf. former RCW sections: (i) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (ii) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

Effective date—1981 c 41: See RCW 62A.11-101.

PART 2 FORM, FORMATION AND READJUSTMENT OF CONTRACT

62A.2-201 Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason

to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (RCW 62A.2-606). [1965 ex.s c 157 § 2-201. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Statute of frauds: RCW 19.36.010.

62A.2-202 Final written expression: Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (RCW 62A.1-205) or by course of performance (RCW 62A.2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1965 ex.s. c 157 § 2-202.]

62A.2-203 Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such contract or offer. [1965 ex.s. c 157 § 2-203. Cf. former RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

Corporate seals—Effect of absence from instrument: RCW 64.04.105.

62A.2-204 Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. [1965 ex.s.

c 157 § 2-204. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-205 Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1965 ex.s. c 157 § 2-205. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-206 Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1965 ex.s. c 157 § 2-206. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-207 Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Title. [1965

ex.s. c 157 § 2-207. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-208 Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (RCW 62A.1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. [1965 ex.s. c 157 § 2-208.]

62A.2-209 Modification, rescission and waiver. (1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Article (RCW 62A.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1965 ex.s. c 157 § 2-209.]

62A.2-210 Delegation of performance; assignment of rights. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due perfor-

mance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (RCW 62A-609). [1965 ex.s. c 157 § 2-210.]

PART 3 GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

62A.2-301 General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. [1965 ex.s. c 157 § 2-301. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41.]

62A.2-302 Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. [1965 ex.s. c 157 § 2-302.]

62A.2-303 Allocation or division of risks. Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. [1965 ex.s. c 157 § 2-303.]

62A.2-304 Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article,

but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [1965 ex.s. c 157 § 2-304. Cf. former RCW 63.04.100(2), (3); 1925 ex.s. c 142 § 9; RRS § 5836-9.]

62A.2-305 Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [1965 ex.s. c 157 § 2-305. Cf. former RCW sections: (i) RCW 63.04.100; 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.110; 1925 ex.s. c 142 § 10; RRS § 5836-10. Subd. (3) cf. former RCW 63.04.120(2); 1925 ex.s. c 142 § 11; RRS § 5836-11.]

62A.2-306 Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. [1965 ex.s. c 157 § 2-306.]

62A.2-307 Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. [1965 ex.s. c 157 § 2-307. Cf. former RCW 63.04.460(1); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-308 Absence of specified place for delivery. Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels. [1965 ex.s. c 157 § 2-308. Subd. (a), (b) cf. former RCW 63.04.440(1); 1925 ex.s. c 142 § 43; RRS § 5836-43.]

62A.2-309 Absence of specific time provisions; notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. [1965 ex.s. c 157 § 2-309. Cf. former RCW sections: (i) RCW 63.04.440(2); 1925 ex.s. c 142 § 43; RRS § 5836-43. (ii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iii) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (iv) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-310 Open time for payment or running of credit; authority to ship under reservation. Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. [1965 ex.s. c 157 § 2-310. Cf. former RCW sections: (i) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (ii) RCW 63.04.470(1); 1925 ex.s. c 142 § 46; RRS § 5836-46. (iii) RCW 63.04.480(2); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-311 Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of RCW 62A.2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the

parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of RCW 62A.2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods. [1965 ex.s. c 157 § 2-311.]

62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. [1965 ex.s. c 157 § 2-312. Cf. former RCW 63.04.140; 1925 ex.s. c 142 § 13; RRS § 5836-13.]

62A.2-313 Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the

goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [1965 ex.s. c 157 § 2-313. Cf. former RCW sections: (i) RCW 63.04.130; 1925 ex.s. c 142 § 12; RRS § 5836-12. (ii) RCW 63.04.150; 1925 ex.s. c 142 § 14; RRS § 5836-14. (iii) RCW 63.04.170; 1925 ex.s. c 142 § 16; RRS § 5836-16.]

Motor vehicle express warranties: Chapter 19.118 RCW.

62A.2-314 Implied warranty: Merchantability; usage of trade. (1) Unless excluded or modified (RCW 62A.2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (RCW 62A.2-316) other implied warranties may arise from course of dealing or usage of trade. [1965 ex.s. c 157 § 2-314. Cf. former RCW 63.04.160(2); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-315 Implied warranty: Fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. [1965 ex.s. c 157 § 2-315. Cf. former RCW 63.04.160(1), (4), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-316 Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example,

that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) in sales of livestock, including but not limited to, horses, mules, cattle, sheep, swine, goats, poultry, and rabbits, there are no implied warranties as defined in this article that the livestock are free from sickness or disease: PROVIDED, That the seller has complied with all state and federal laws and regulations that apply to animal health and disease, and the seller is not guilty of fraud, deceit or misrepresentation.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section and the provisions of RCW 62A.2-719, as now or hereafter amended, in any case where goods are purchased primarily for personal, family or household use and not for commercial or business use, disclaimers of the warranty of merchantability or fitness for particular purpose shall not be effective to limit the liability of merchant sellers except insofar as the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (RCW 62A.2-718 and RCW 62A.2-719). [1982 c 199 § 1; 1974 ex.s. c 180 § 1; 1974 ex.s. c 78 § 1; 1965 ex.s. c 157 § 2-316. Subd. (3)(b) cf. former RCW 63.04.160(3); 1925 ex.s. c 142 § 15; RRS § 5836-15. Subd. (3)(c) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-317 Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1965 ex.s. c 157 § 2-317. Cf. former RCW sections: RCW 63.04.150 through 63.04.170; 1925

ex.s. c 142 §§ 14 through 16; RRS §§ 5836-14 through 5836-16.]

62A.2-318 Third party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. [1965 ex.s. c 157 § 2-318.]

62A.2-319 F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW 62A.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW 62A.2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW 62A.2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW 62A.2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-319.]

62A.2-320 C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named

destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-320.]

62A.2-321 C.I.F. or C.&F.: "Net landed weights"; "payment on arrival"; warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. [1965 ex.s. c 157 § 2-321.]

62A.2-322 Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. [1965 ex.s. c 157 § 2-322.]

62A.2-323 Form of bill of lading required in overseas shipment; "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of RCW 62A.2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. [1965 ex.s. c 157 § 2-323.]

62A.2-324 "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (RCW 62A.2-613). [1965 ex.s. c 157 § 2-324.]

62A.2-325 "Letter of credit" term; "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [1965 ex.s. c 157 § 2-325.]

62A.2-326 Sale on approval and sale or return; consignment sales and rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (RCW 62A.2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202). [1965 ex.s. c 157 § 2-326. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-327 Special incidents of sale on approval and sale or return. (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. [1965 ex.s. c 157 § 2-327. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-328 Sale by auction. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [1965 ex.s. c 157 § 2-328. Cf. former RCW 63.04.220; 1925 ex.s. c 142 § 21; RRS § 5836-21.]

PART 4 TITLE, CREDITORS AND GOOD FAITH PURCHASERS

62A.2-401 Passing of title; reservation for security; limited application of this section. Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller

to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale". [1965 ex.s. c 157 § 2-401. Cf. former RCW sections: RCW 63.04.180 through 63.04.210; 1925 ex.s. c 142 §§ 17 through 20; RRS § 5836-17 through 5836-20.]

62A.2-402 Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (RCW 62A.2-502 and RCW 62A.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [1965 ex.s. c 157 § 2-402. Subd. (2) cf. former RCW sections: (i) RCW 63.04.270; 1925 ex.s. c 142 § 26; RRS § 5836-26. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

62A.2-403 Power to transfer; good faith purchase of goods; "entrusting". (1) A purchaser of goods acquires all title which his or her transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him or her power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9) and Documents of Title (Article 7). [1993 c 395 § 6-103; 1967 c 114 § 8; 1965 ex.s. c 157 § 2-403. Cf. former RCW sections: (i) RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.04.210(4); 1925 ex.s. c 142 § 20; RRS § 5836-20. (iii) RCW 63.04.240; 1925 ex.s. c 142 § 23; RRS § 5836-23. (iv) RCW 63.04.250; 1925 ex.s. c 142 § 24; RRS § 5836-24. (v) RCW 63.04.260; 1925 ex.s. c 142 § 25; RRS § 5836-25. (vi) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Restoration of stolen property: RCW 10.79.050.

PART 5 PERFORMANCE

62A.2-501 Insurable interest in goods; manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is

for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [1965 ex.s. c 157 § 2-501. Cf. former RCW sections: (i) RCW 63.04.180; 1925 ex.s. c 142 § 17; RRS § 5836-17. (ii) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-502 Buyer's right to goods on seller's insolvency. (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. [1965 ex.s. c 157 § 2-502. Cf. former RCW sections: RCW 63.04.180 through 63.04.200; 1925 ex.s. c 142 §§ 17 through 19; RRS §§ 5836-17 through 5836-19.]

62A.2-503 Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights

fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of RCW 62A.2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection. [1965 ex.s. c 157 § 2-503. Cf. former RCW sections: RCW 63.04.120, 63.04.200, 63.04.210, 63.04.440, 63.04.470, and 63.04.520; 1925 ex.s. c 142 §§ 11, 19, 20, 43, 46, and 51; RRS §§ 5836-11, 5836-19, 5836-20, 5836-43, 5836-46, and 5836-51.]

62A.2-504 Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. [1965 ex.s. c 157 § 2-504. Cf. former RCW 63.04.470; 1925 ex.s. c 142 § 46; RRS § 5836-46.]

62A.2-505 Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of RCW 62A.2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. [1965 ex.s. c 157 § 2-505. Cf. former RCW

63.04.210 (2), (3), (4); 1925 ex.s. c 142 § 20; RRS § 5836-20.]

62A.2-506 Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. [1965 ex.s. c 157 § 2-506.]

62A.2-507 Effect of seller's tender; delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. [1965 ex.s. c 157 § 2-507. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. (iii) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (iv) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-508 Cure by seller of improper tender or delivery; replacement. (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [1965 ex.s. c 157 § 2-508.]

62A.2-509 Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of RCW 62A.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510). [1965 ex.s. c 157 § 2-509. Cf. former RCW sections: (i) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19. (ii) RCW 63.04.230; 1925 ex.s. c 142 § 22; RRS § 5836-22.]

62A.2-510 Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. [1965 ex.s. c 157 § 2-510.]

62A.2-511 Tender of payment by buyer; payment by check. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW 62A.3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. [1996 c 77 § 2; 1965 ex.s. c 157 § 2-511. Cf. former RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42.]

62A.2-512 Payment by buyer before inspection. (1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-109(2)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies. [1997 c 56 § 20; 1965 ex.s. c 157 § 2-512. Cf. former RCW sections: (i) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

62A.2-513 Buyer's right to inspection of goods. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of RCW 62A.2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. [1965 ex.s. c 157 § 2-513. Cf. former RCW 63.04.480 (2), (3); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-514 When documents deliverable on acceptance; when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. [1965 ex.s. c 157 § 2-514. Cf. former RCW 81.32.411; 1961 c 14 § 81.32.411; prior: 1915 c 159 § 41; RRS § 3687; formerly RCW 81.32.500.]

62A.2-515 Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. [1965 ex.s. c 157 § 2-515.]

PART 6 BREACH, REPUDIATION AND EXCUSE

62A.2-601 Buyer's rights on improper delivery. Subject to the provisions of this Article on breach in installment contracts (RCW 62A.2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (RCW 62A.2-718 and RCW 62A.2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest. [1965 ex.s. c 157 § 2-601. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (iii) RCW 63.04.700(1); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-602 Manner and effect of rightful rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (RCW 62A.2-603 and RCW 62A.2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of RCW 62A.2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (RCW 62A.2-703). [1965 ex.s. c 157 § 2-602. Cf. former RCW sections: (i) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8. (ii) RCW 63.04.510; 1925 ex.s. c 142 § 50; RRS § 5836-50.]

62A.2-603 Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of RCW 62A.2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is

none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [1965 ex.s. c 157 § 2-603.]

62A.2-604 Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. [1965 ex.s. c 157 § 2-604.]

62A.2-605 Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. [1965 ex.s. c 157 § 2-605.]

62A.2-606 What constitutes acceptance of goods.

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of RCW 62A.2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1965 ex.s. c 157 § 2-606. Cf. former RCW sections: (i) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does

not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of RCW 62A.2-312). [1965 ex.s. c 157 § 2-607. Subd. (1) cf. former RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. Subd. (2), (3) cf. former RCW sections: (i) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49. (ii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-608 Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [1965 ex.s. c 157 § 2-608. Cf. former RCW 63.04.700 (1)(d), (3), (4), (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-609 Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [1965 ex.s. c 157 § 2-609. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(b); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-610 Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (RCW 62A.2-703 or RCW 62A.2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (RCW 62A.2-704). [1965 ex.s. c 157 § 2-610. Cf. former RCW section: (i) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.660; 1925 ex.s. c 142 § 65; RRS § 5836-65.]

62A.2-611 Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (RCW 62A.2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1965 ex.s. c 157 § 2-611.]

62A.2-612 "Installment contract"; breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments. [1965 ex.s. c 157 § 2-612. Cf. former RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-613 Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (RCW 62A.2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. [1965 ex.s. c 157 § 2-613. Cf. former RCW sections: (i) RCW 63.04.080; 1925 ex.s. c 142 § 7; RRS § 5836-7. (ii) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8.]

62A.2-614 Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. [1965 ex.s. c 157 § 2-614.]

62A.2-615 Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. [1965 ex.s. c 157 § 2-615.]

62A.2-616 Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (RCW 62A.2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected. [1965 ex.s. c 157 § 2-616.]

PART 7 REMEDIES

62A.2-701 Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. [1965 ex.s. c 157 § 2-701.]

62A.2-702 Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (RCW 62A.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to

reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (RCW 62A.2-403). Successful reclamation of goods excludes all other remedies with respect to them. [1981 c 41 § 4; 1965 ex.s. c 157 § 2-702. Subd. (1) cf. former RCW sections: (i) RCW 63.04.540(1)(b); 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(c); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.580; 1925 ex.s. c 142 § 57; RRS § 5836-57. Subd. (3) cf. former RCW 63.04.755(3); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.2-703 Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (RCW 62A.2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (RCW 62A.2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (RCW 62A.2-706);

(e) recover damages for non-acceptance (RCW 62A.2-708) or in a proper case the price (RCW 62A.2-709);

(f) cancel. [1965 ex.s. c 157 § 2-703. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.620(1); 1925 ex.s. c 142 § 61; RRS § 5836-61.]

62A.2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. [1965 ex.s. c 157 § 2-704. Cf. former RCW sections: (i) RCW 63.04.640(3); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.650(4); 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-705 Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the

buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1965 ex.s. c 157 § 2-705. Cf. former RCW sections: (i) RCW 22.04.100; 1913 c 99 § 9; RRS § 3595; prior: 1891 c 134 § 7. (ii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iii) RCW 22.04.500; 1913 c 99 § 49; RRS § 3635. (iv) RCW 63.04.580 through 63.04.600; 1925 ex.s. c 142 §§ 57 through 59; RRS §§ 5836-57 through 5836-59. (v) RCW 81.32.121, 81.32.141, and 81.32.421; 1961 c 14 §§ 81.32.121, 81.32.141, and 81.32.421; prior: 1915 c 159 §§ 12, 14, and 42; RRS §§ 3658, 3660, and 3688; formerly RCW 81.32.130, 81.32.160 and 81.32.510.]

62A.2-706 Seller's resale including contract for resale. (1) Under the conditions stated in RCW 62A.2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (RCW 62A.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of RCW 62A.2-711). [1967 c 114 § 13; 1965 ex.s. c 157 § 2-706. Cf. former RCW 63.04.610; 1925 ex.s. c 142 § 60; RRS § 5836-60.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.2-707 "Person in the position of a seller". (1)

A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (RCW 62A.2-705) and resell (RCW 62A.2-706) and recover incidental damages (RCW 62A.2-710). [1965 ex.s. c 157 § 2-707. Cf. former RCW 63.04.530(2); 1925 ex.s. c 142 § 52; RRS § 5836-52.]

62A.2-708 Seller's damages for non-acceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (RCW 62A.2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

[1965 ex.s. c 157 § 2-708. Cf. former RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-709 Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (RCW 62A.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. [1965 ex.s. c 157 § 2-709. Cf. former RCW 63.04.640; 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-710 Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. [1965 ex.s. c 157 § 2-710. Cf. former RCW sections: (i) RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-711 Buyer's remedies in general; buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (RCW 62A.2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (RCW 62A.2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (RCW 62A.2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (RCW 62A.2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-711. Subd. (3) cf. former RCW 63.04.700(5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-712 "Cover"; buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. [1965 ex.s. c 157 § 2-712.]

62A.2-713 Buyer's damages for non-delivery or repudiation. (1) Subject to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. [1965 ex.s. c 157 § 2-713. Cf. former RCW 63.04.680(3); 1925 ex.s. c 142 § 67; RRS § 5836-67.]

62A.2-714 Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of RCW 62A.2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. [1965 ex.s. c 157 § 2-714. Cf. former RCW 63.04.700 (6), (7); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-715 Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection,

receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty. [1965 ex.s. c 157 § 2-715. Subd. (2) cf. former RCW sections: (i) RCW 63.04.700(7); 1925 ex.s. c 142 § 69; RRS § 5836-69. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-716 Buyer's right to specific performance or replevin. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. [1965 ex.s. c 157 § 2-716. Cf. former RCW 63.04.690; 1925 ex.s. c 142 § 68; RRS § 5836-68.]

Replevin: Chapter 7.64 RCW.

62A.2-717 Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [1965 ex.s. c 157 § 2-717. Cf. former RCW 63.04.700(1)(a); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-718 Liquidation or limitation of damages; deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-718.]

62A.2-719 Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.

(3) Limitation of consequential damages for injury to the person in the case of goods purchased primarily for personal, family or household use or of any services related thereto is invalid unless it is proved that the limitation is not unconscionable. Limitation of remedy to repair or replacement of defective parts or non-conforming goods is invalid in sales of goods primarily for personal, family or household use unless the manufacturer or seller maintains or provides within this state facilities adequate to provide reasonable and expeditious performance of repair or replacement obligations.

Limitation of other consequential damages is valid unless it is established that the limitation is unconscionable. [1974 ex.s. c 180 § 2; 1974 ex.s. c 78 § 2; 1965 ex.s. c 157 § 2-719. Subd. (1)(a) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-720 Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. [1965 ex.s. c 157 § 2-720.]

62A.2-721 Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be

deemed inconsistent with a claim for damages or other remedy. [1965 ex.s. c 157 § 2-721.]

62A.2-722 Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. [1965 ex.s. c 157 § 2-722.]

62A.2-723 Proof of market price: Time and place.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (RCW 62A.2-708 or RCW 62A.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. [1965 ex.s. c 157 § 2-723.]

62A.2-724 Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. [1965 ex.s. c 157 § 2-724.]

62A.2-725 Statute of limitations in contracts for sale. (1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Title becomes effective. [1965 ex.s. c 157 § 2-725.]

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**Article 2A
LEASES**

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PART 1
GENERAL PROVISIONS

62A.2A-101 Short title. This Article shall be known and may be cited as the Uniform Commercial Code—Leases. [1993 c 230 § 2A-101.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-102 Scope. This Article applies to any transaction, regardless of form, that creates a lease. [1993 c 230 § 2A-102.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-103 Definitions and index of definitions.

(1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use

of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the

context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions."	RCW 62A.2A-310(1).
"Construction mortgage."	RCW 62A.2A-309(1)(d).
"Encumbrance."	RCW 62A.2A-309(1)(e).
"Fixtures."	RCW 62A.2A-309(1)(a).
"Fixture filing."	RCW 62A.2A-309(1)(b).
"Purchase money lease."	RCW 62A.2A-309(1)(c).

(3) The following definitions in other Articles apply to this Article:

"Account."	RCW 62A.9-106.
"Between merchants."	RCW 62A.2-104(3).
"Buyer."	RCW 62A.2-103(1)(a).
"Chattel paper."	RCW 62A.9-105(1)(b).
"Consumer goods."	RCW 62A.9-109(1).
"Document."	RCW 62A.9-105(1)(f).
"Entrusting."	RCW 62A.2-403(3).
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"Pursuant to commitment."	RCW 62A.9-105(1)(k).
"Receipt."	RCW 62A.2-103(1)(c).
"Sale."	RCW 62A.2-106(1).
"Sale on approval."	RCW 62A.2-326.

"Sale or return."

RCW 62A.2-326.

"Seller."

RCW 62A.2-103(1)(d).

(4) In addition, Article 62A.1 RCW contains general definitions and principles of construction and interpretation applicable throughout this Article. [1993 c 230 § 2A-103.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-104 Leases subject to other law. (1) A lease, although subject to this Article, is also subject to any applicable:

(a) Certificate of title statute of this state (chapters 46.12 and 88.02 RCW);

(b) Certificate of title statute of another jurisdiction (RCW 62A.2A-105); or

(c) Consumer protection statute of this state.

(2) In case of conflict between this Article, other than RCW 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to in subsection (1) of this section, the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein. [1993 c 230 § 2A-104.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-105 Territorial application of article to goods covered by certificate of title. Subject to the provisions of RCW 62A.2A-304(3) and 62A.2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction. [1993 c 230 § 2A-105.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lessee executes the lease, the choice is not enforceable.

(2) If the judicial forum or the forum for dispute resolution chosen by the parties to a consumer lease is a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lease is executed by the lessee, the choice is not enforceable. [1993 c 230 § 2A-106.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-107 Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1993 c 230 § 2A-107.]

[Title 62A RCW—page 30]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-108 Unconscionability. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If a party claims that, or it appears to the court that, the lease contract or a clause within the contract may be unconscionable, the court shall allow a reasonable opportunity to present evidence as to the lease or clause's commercial setting, purpose, and effect to aid the court in making the determination. [1993 c 230 § 2A-108.]

Effective date—1993 c 230: See RCW 62A.11-110.

PART 2 FORMATION AND CONSTRUCTION OF LEASE CONTRACT

62A.2A-201 Statute of frauds. (1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) of this section beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

(a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term. [1993 c 230 § 2A-201.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-202 Final written expression: Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) By course of dealing or usage of trade or by course of performance; and

(2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1993 c 230 § 2A-202.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-203 Seals inoperative. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer. [1993 c 230 § 2A-203.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-204 Formation in general. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy. [1993 c 230 § 2A-204.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-205 Firm offers. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1993 c 230 § 2A-205.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-206 Offer and acceptance in formation of lease contract. (1) Unless otherwise unambiguously

indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1993 c 230 § 2A-206.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-207 Course of performance or practical construction. (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of RCW 62A.2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance. [1993 c 230 § 2A-207.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-208 Modification, rescission, and waiver.

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1993 c 230 § 2A-208.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-209 Lessee under finance lease as beneficiary of supply contract. (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (RCW 62A.2A-209(1)) does not: (i) Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law. [1993 c 230 § 2A-209.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-210 Express warranties. (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty. [1993 c 230 § 2A-210.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-211 Warranties against interference and against infringement; lessee's obligation against infringement. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless

against any claim by way of infringement or the like that arises out of compliance with the specifications. [1993 c 230 § 2A-211.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-212 Implied warranty of merchantability.

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the description in the lease agreement;

(b) In the case of fungible goods, are of fair average quality within the description;

(c) Are fit for the ordinary purposes for which goods of that type are used;

(d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) Are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade. [1993 c 230 § 2A-212.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-213 Implied warranty of fitness for particular purpose. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose. [1993 c 230 § 2A-213.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-214 Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of RCW 62A.2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to subsection (3) of this section, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of

warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (RCW 62A.2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person. [1993 c 230 § 2A-214.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-215 Cumulation and conflict of warranties express or implied. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1993 c 230 § 2A-215.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-216 Third party beneficiaries of express and implied warranties. A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section. [1993 c 230 § 2A-216.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-217 Identification. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract

refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals. [1993 c 230 § 2A-217.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-218 Insurance and proceeds. (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance. [1993 c 230 § 2A-218.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-219 Risk of loss. (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this Article on the effect of default on risk of loss (RCW 62A.2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2) (a) or (b) of this section, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery. [1993 c 230 § 2A-219.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-220 Effect of default on risk of loss. (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time. [1993 c 230 § 2A-220.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-221 Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier, before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or RCW 62A.2A-219, then:

(a) If the loss is total, the lease contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor. [1993 c 230 § 2A-221.]

Effective date—1993 c 230: See RCW 62A.11-110.

PART 3 EFFECT OF LEASE CONTRACT

62A.2A-301 Enforceability of lease contract. Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties. [1993 c 230 § 2A-301.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-302 Title to and possession of goods. Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent. [1993 c 230 § 2A-302.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights. (1) As used

in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of RCW 62A.9-102(1)(b).

(2) Except as provided in subsections (3) and (4) of this section, a provision in a lease agreement which (a) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (b) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (a) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (b) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5) of this section.

(5) Subject to subsections (3) and (4) of this section:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in RCW 62A.2A-501(2);

(b) If subsection (5)(a) of this section is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (A) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (B) a court having jurisdiction

may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous. [1993 c 230 § 2A-303.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-304 Subsequent lease of goods by lessor.

(1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. [1993 c 230 § 2A-304.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-305 Sale or sublease of goods by lessee.

(1) Subject to the provisions of RCW 62A.2A-303, a buyer or sublessee from the lessee of goods under an existing lease

contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;

(b) The delivery was in exchange for a check which is later dishonored; or

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. [1993 c 230 § 2A-305.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-306 Priority of certain liens arising by operation of law.

If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise. [1993 c 230 § 2A-306.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

(1) Except as otherwise provided in RCW 62A.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) of this section and in RCW 62A.2A-306 and 62A.2A-308, a creditor of a lessor takes subject to the lease contract unless:

(a) The creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) The creditor holds a security interest in the goods which was perfected (RCW 62A.9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods

created by the lessor even though the security interest is perfected (RCW 62A.9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five day period. [1993 c 230 § 2A-307.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-308 Special rights of creditors. (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith. [1993 c 230 § 2A-308.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-309 Lessor's and lessee's rights when goods become fixtures. (1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of RCW 62A.9-402(5);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate,

the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (b) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions, Article 62A.9 RCW. [1993 c 230 § 2A-309.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-310 Lessor's and lessee's rights when goods become accessions. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease, or disclaimed an interest in the goods as part of the whole, or the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility.

(4) Unless the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility, the interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his or her other rights and remedies under this Article, remove the goods from the

whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation. [1993 c 230 § 2A-310.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-311 Priority subject to subordination.

Nothing in this Article prevents subordination by agreement by any person entitled to priority. [1993 c 230 § 2A-311.]

Effective date—1993 c 230: See RCW 62A.11-110.

PART 4

PERFORMANCE OF LEASE CONTRACT:
REPUDIATED, SUBSTITUTED, AND EXCUSSED

62A.2A-401 Insecurity: Adequate assurance of performance. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. [1993 c 230 § 2A-401.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-402 Anticipatory repudiation. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to RCW 62A.2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or

not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (RCW 62A.2A-524). [1993 c 230 § 2A-402.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-403 Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under RCW 62A.2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1993 c 230 § 2A-403.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-404 Substituted performance. (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory. [1993 c 230 § 2A-404.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-405 Excused performance. Subject to RCW 62A.2A-404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (b) and (c) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in subsection (a) of this section affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and

deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (b) of this section, of the estimated quota thus made available for the lessee. [1993 c 230 § 2A-405.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-406 Procedure on excused performance.

(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under RCW 62A.2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510):

(a) Terminate the lease contract (RCW 62A.2A-505(2)); or

(b) Except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under RCW 62A.2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected. [1993 c 230 § 2A-406.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-407 Irrevocable promises: Finance leases.

(1) In the case of a finance lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) of this section:

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods. [1993 c 230 § 2A-407.]

Effective date—1993 c 230: See RCW 62A.11-110.

PART 5

A. DEFAULT IN GENERAL

62A.2A-501 Default: Procedure. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and

remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in RCW 62A.1-106(1) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part 5 as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part 5 does not apply. [1993 c 230 § 2A-501.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-502 Notice after default. Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement. [1993 c 230 § 2A-502.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-503 Modification or impairment of rights and remedies. (1) Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

(2) Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

(3) Consequential damages may be liquidated under RCW 62A.2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article. [1993 c 230 § 2A-503.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-504 Liquidation of damages. (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of

the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (RCW 62A.2A-525 or 62A.2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1) of this section; or

(b) In the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

(4) A lessee's right to restitution under subsection (3) of this section is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this Article other than subsection (1) of this section; and

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract. [1993 c 230 § 2A-504.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy. [1993 c 230 § 2A-505.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-506 Statute of limitations. (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective. [1993 c 230 § 2A-506.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-507 Proof of market rent: Time and place.

(1) Damages based on market rent (RCW 62A.2A-519 or 62A.2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in RCW 62A.2A-519 and 62A.2A-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility. [1993 c 230 § 2A-507.]

Effective date—1993 c 230: See RCW 62A.11-110.

B. DEFAULT BY LESSOR

62A.2A-508 Lessee's remedies. (1) If a lessor fails to deliver the goods in conformity to the lease contract (RCW 62A.2A-509) or repudiates the lease contract (RCW 62A.2A-402), or a lessee rightfully rejects the goods (RCW 62A.2A-509) or justifiably revokes acceptance of the goods

(RCW 62A.2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Recover so much of the rent and security as has been paid and which is just under the circumstances;

(c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (RCW 62A.2A-518 and 62A.2A-520), or recover damages for nondelivery (RCW 62A.2A-519 and 62A.2A-520);

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) If the goods have been identified, recover them (RCW 62A.2A-522); or

(b) In a proper case, obtain specific performance or replevy the goods (RCW 62A.2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in RCW 62A.2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (RCW 62A.2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to RCW 62A.2A-527(5).

(6) Subject to the provisions of RCW 62A.2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract. [1993 c 230 § 2A-508.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-509 Lessee's rights on improper delivery; rightful rejection. (1) Subject to the provisions of RCW 62A.2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor. [1993 c 230 § 2A-509.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-510 Installment lease contracts: Rejection and default. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the

nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries. [1993 c 230 § 2A-510.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-511 Merchant lessee's duties as to rightfully rejected goods. (1) Subject to any security interest of a lessee (RCW 62A.2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee, under subsection (1) of this section, or any other lessee (RCW 62A.2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

(3) In complying with this section or RCW 62A.2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or RCW 62A.2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article. [1993 c 230 § 2A-511.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-512 Lessee's duties as to rightfully rejected goods. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (RCW 62A.2A-511) and subject to any security interest of a lessee (RCW 62A.2A-508(5)):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the

lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in RCW 62A.2A-511; but

(c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) of this section is not acceptance or conversion. [1993 c 230 § 2A-512.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-513 Cure by lessor of improper tender or delivery; replacement. (1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee. [1993 c 230 § 2A-513.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-514 Waiver of lessee's objections. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (RCW 62A.2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents. [1993 c 230 § 2A-514.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-515 Acceptance of goods. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (RCW 62A.2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1993 c 230 § 2A-515.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (RCW 62A.2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (RCW 62A.2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (RCW 62A.2A-211). [1993 c 230 § 2A-516.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-517 Revocation of acceptance of goods. (1)

A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them. [1993 c 230 § 2A-517.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-518 Cover; substitute goods. (1) After a default by a lessor under the lease contract of the type described in (RCW 62A.2A-508(1)), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and RCW 62A.2A-519 governs. [1993 c 230 § 2A-518.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3)), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of

the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (RCW 62A.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty. [1993 c 230 § 2A-519.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-520 Lessee's incidental and consequential damages. (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty. [1993 c 230 § 2A-520.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-521 Lessee's right to specific performance or replevin. (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing. [1993 c 230 § 2A-521.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-522 Lessee's right to goods on lessor's insolvency. (1) Subject to subsection (2) of this section and

even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (RCW 62A.2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract. [1993 c 230 § 2A-522.]

Effective date—1993 c 230: See RCW 62A.11-110.

C. DEFAULT BY LESSEE

62A.2A-523 Lessor's remedies. (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Proceed respecting goods not identified to the lease contract (RCW 62A.2A-524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (RCW 62A.2A-525);

(d) Stop delivery of the goods by any bailee (RCW 62A.2A-526);

(e) Dispose of the goods and recover damages (RCW 62A.2A-527), or retain the goods and recover damages (RCW 62A.2A-528), or in a proper case recover rent (RCW 62A.2A-529);

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section. [1993 c 230 § 2A-523.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-524 Lessor's right to identify goods to lease contract. (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or

(3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (RCW 62A.2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner. [1993 c 230 § 2A-524.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-525 Lessor's right to possession of goods.

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (RCW 62A.2A-527).

(3) The lessor may proceed under subsection (2) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action. [1993 c 230 § 2A-525.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-526 Lessor's stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the

lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1993 c 230 § 2A-526.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-527 Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and RCW 62A.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (RCW 62A.2A-508(5)). [1993 c 230 § 2A-527.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does

not qualify for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under subsection (1)(i) of this section of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under RCW 62A.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition. [1993 c 230 § 2A-528.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-529 Lessor's action for the rent. (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2) of this section, the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease

agreement, the lessor's recovery against the lessee for damages is governed by RCW 62A.2A-527 or 62A.2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to RCW 62A.2A-527 or 62A.2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under RCW 62A.2A-527 and 62A.2A-528. [1993 c 230 § 2A-529.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-530 Lessor's incidental damages. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default. [1993 c 230 § 2A-530.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-531 Standing to sue third parties for injury to goods. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

- (i) Has a security interest in the goods;
- (ii) Has an insurable interest in the goods; or
- (iii) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern. [1993 c 230 § 2A-531.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-532 Lessor's rights to residual interest. In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee. [1993 c 230 § 2A-532.]

Effective date—1993 c 230: See RCW 62A.11-110.

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 (Formerly: Commercial paper)

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PART 1

GENERAL PROVISIONS AND DEFINITIONS

62A.3-101 Short title. This Article may be cited as Uniform Commercial Code—Negotiable Instruments. [1993 c 229 § 3; 1965 ex.s. c 157 § 3-101.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-102 Subject matter. (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency. [1993 c 229 § 4; 1965 ex.s. c 157 § 3-102. Cf. former RCW sections: (i) RCW 62.01.001(5); 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392. (ii) RCW 62.01.128; 1955 c 35 § 62.01.128; prior: 1899 c 149 § 128; RRS § 3518. (iii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-103 Definitions. (a) In this Article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.3-409
"Accommodated party"	RCW 62A.3-419
"Accommodation party"	RCW 62A.3-419
"Alteration"	RCW 62A.3-407
"Anomalous indorsement"	RCW 62A.3-205
"Blank indorsement"	RCW 62A.3-205
"Cashier's check"	RCW 62A.3-104
"Certificate of deposit"	RCW 62A.3-104
"Certified check"	RCW 62A.3-409
"Check"	RCW 62A.3-104
"Consideration"	RCW 62A.3-303
"Draft"	RCW 62A.3-104
"Holder in due course"	RCW 62A.3-302
"Incomplete instrument"	RCW 62A.3-115
"Indorsement"	CW 62A.3-204
"Indorser"	RCW 62A.3-204
"Instrument"	RCW 62A.3-104
"Issue"	RCW 62A.3-105
"Issuer"	RCW 62A.3-105
"Negotiable instrument"	RCW 62A.3-104
"Negotiation"	RCW 62A.3-201
"Note"	RCW 62A.3-104
"Payable at a definite time"	RCW 62A.3-108
"Payable on demand"	RCW 62A.3-108
"Payable to bearer"	RCW 62A.3-109
"Payable to order"	RCW 62A.3-109
"Payment"	RCW 62A.3-602
"Person entitled to enforce"	RCW 62A.3-301
"Presentment"	RCW 62A.3-501

"Reacquisition"	RCW 62A.3-207
"Special indorsement"	RCW 62A.3-205
"Teller's check"	RCW 62A.3-104
"Transfer of instrument"	RCW 62A.3-203
"Traveler's check"	RCW 62A.3-104
"Value"	RCW 62A.3-303

(c) The following definitions in other Articles apply to this Article:

"Bank"	RCW 62A.4-105
"Banking day"	RCW 62A.4-104
"Clearing house"	RCW 62A.4-104
"Collecting bank"	RCW 62A.4-105
"Depository bank"	RCW 62A.4-105
"Documentary draft"	RCW 62A.4-104
"Intermediary bank"	RCW 62A.4-105
"Item"	RCW 62A.4-104
"Payor bank"	RCW 62A.4-105
"Suspends payments"	RCW 62A.4-104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1993 c 229 § 5; 1965 ex.s. c 157 § 3-103.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-104 Negotiable instrument. (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except subsection (a)(1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank. [1993 c 229 § 6; 1965 ex.s. c 157 § 3-104. Cf. former RCW sections: RCW 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; 1955 c 35 §§ 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; prior: 1899 c 149 §§ 1, 5, 10, 126, 184, and 185; RRS §§ 3392, 3396, 3401, 3516, 3574, and 3575.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-105 Issue of instrument. (a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument. [1993 c 229 § 7; 1965 ex.s. c 157 § 3-105. Cf. former RCW 62.01.003; 1955 c 35 § 62.01.003; prior: 1899 c 149 § 3; RRS § 3394.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-106 Unconditional promise or order. (a) Except as provided in this section, for the purposes of RCW 62A.3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of RCW 62A.3-104(a). If the person whose specimen

signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of RCW 62A.3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument. [1993 c 229 § 8; 1989 c 13 § 1; 1965 ex.s. c 157 § 3-106. Cf. former RCW sections: (i) RCW 62.01.002; 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-107 Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid. [1993 c 229 § 9; 1965 ex.s. c 157 § 3-107. Cf. former RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-108 Payable on demand or at definite time.

(a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date. [1993 c 229 § 10; 1965 ex.s. c 157 § 3-108. Cf. former RCW 62.01.007; 1955 c 35 § 62.01.007; prior: 1899 c 149 § 7; RRS § 3398.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-109 Payable to bearer or to order. (a) A promise or order is payable to bearer if it:

(1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) Does not state a payee; or

(3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to RCW 62A.3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to RCW 62A.3-205(b). [1993 c 229 § 11; 1989 c 13 § 2; 1965 ex.s. c 157 § 3-109. Cf. former RCW sections: (i) RCW 62.01.002(3); 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.004; 1955 c 35 § 62.01.004; prior: 1899 c 149 § 4; RRS § 3395. (iii) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-110 Identification of person to whom instrument is payable. (a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to

the represented person, the representative, or a successor of the representative;

(iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively. [1993 c 229 § 12; 1965 ex.s. c 157 § 3-110. Cf. former RCW 62.01.008; 1955 c 35 § 62.01.008; prior: 1899 c 149 § 8; RRS § 3399.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-111 Place of payment. Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker. [1993 c 229 § 13; 1965 ex.s. c 157 § 3-111. Cf. former RCW 62.01.009; 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-112 Interest. (a) Unless otherwise provided in the instrument or in RCW 19.52.010, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, then except as otherwise provided in RCW 19.52.010, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues. [1996 c 77 § 3; 1993 c 229 § 14; 1965 ex.s. c 157 § 3-112. Cf. former RCW sections: (i) 62.01.005; 1955 c 35 § 62.01.005; prior: 1899 c 149 § 5; RRS § 3396. (ii) RCW 62.01.006; 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-113 Date of instrument. (a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in RCW 62A.4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder. [1993 c 229 § 15; 1965 ex.s. c 157 § 3-113. Cf. former RCW 62.01.006(4); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-114 Contradictory terms of instrument. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers. [1993 c 229 § 16; 1965 ex.s. c 157 § 3-114. Cf. former RCW sections: (i) RCW 62.01.006(1); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397. (ii) RCW 62.01.011; 1955 c 35 § 62.01.011; prior: 1899 c 149 § 11; RRS § 3402. (iii) RCW 62.01.012; 1955 c 35 § 62.01.012; prior: 1899 c 149 § 12; RRS § 3403. (iv) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-115 Incomplete instrument. (a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under RCW 62A.3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under RCW 62A.3-104, but, after completion, the requirements of RCW 62A.3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under RCW 62A.3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority. [1993 c 229 § 17; 1965 ex.s. c 157 § 3-115. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (iii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-116 Joint and several liability; contribution. (a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument

as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in RCW 62A.3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged. [1993 c 229 § 18; 1965 ex.s. c 157 § 3-116. Cf. former RCW 62.01.041; 1955 c 35 § 62.01.041; prior: 1899 c 149 § 41; RRS § 3432.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-117 Other agreements affecting instrument. Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation. [1993 c 229 § 19; 1965 ex.s. c 157 § 3-117. Cf. former RCW 62.01.042; 1955 c 35 § 62.01.042; prior: 1899 c 149 § 42; RRS § 3433.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-118 Statute of limitations. (a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within six years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be com-

menced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues. [1995 c 74 § 1; 1993 c 229 § 20; 1965 ex.s. c 157 § 3-118. Cf. former RCW sections: (i) RCW 62.01.017; 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.068; 1955 c 35 § 62.01.068; prior: 1899 c 149 § 68; RRS § 3459. (iii) RCW 62.01.130; 1955 c 35 § 62.01.130; prior: 1899 c 149 § 130; RRS § 3520.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-119 Notice of right to defend action. In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend. [1993 c 229 § 21; 1965 ex.s. c 157 § 3-119.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 2

NEGOTIATION, TRANSFER, AND INDORSEMENT

62A.3-201 Negotiation. (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone. [1993 c 229 § 22; 1965 ex.s. c 157 § 3-201. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440. (iii) RCW

62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-202 Negotiation subject to rescission. (a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy. [1993 c 229 § 23; 1965 ex.s. c 157 § 3-202. Cf. former RCW sections: (i) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421. (ii) RCW 62.01.031; 1955 c 35 § 62.01.031; prior: 1899 c 149 § 31; RRS § 3422. (iii) RCW 62.01.032; 1955 c 35 § 62.01.032; prior: 1899 c 149 § 32; RRS § 3423.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-203 Transfer of instrument; rights acquired by transfer. (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee. [1993 c 229 § 24; 1965 ex.s. c 157 § 3-203. Cf. former RCW 62.01.043; 1955 c 35 § 62.01.043; prior: 1899 c 149 § 43; RRS § 3434.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-204 Indorsement. (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other

circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection. [1993 c 229 § 25; 1965 ex.s. c 157 § 3-204. Cf. former RCW sections: (i) RCW 62.01.009(5); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400. (ii) RCW 62.01.033 through 62.01.036; 1955 c 35 §§ 62.01.033 through 62.01.036; prior: 1899 c 149 §§ 33 through 36; RRS §§ 3424 through 3427. (iii) RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-205 Special indorsement; blank indorsement; anomalous indorsement. (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in RCW 62A.3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated. [1993 c 229 § 26; 1965 ex.s. c 157 § 3-205. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-206 Restrictive indorsement. (a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument

is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in RCW 62A.4-201(b), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in subsection (c)(3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in RCW 62A.3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section. [1993 c 229 § 27; 1965 ex.s. c 157 § 3-206. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior:

1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.037; 1955 c 35 § 62.01.037; prior: 1899 c 149 § 37; RRS § 3428. (iii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430. (iv) RCW 62.01.047; 1955 c 35 § 62.01.047; prior: 1899 c 149 § 47; RRS § 3438.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-207 Reacquisition. Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder. [1993 c 229 § 28; 1965 ex.s. c 157 § 3-207. Cf. former RCW sections: (i) RCW 62.01.022; 1955 c 35 § 62.01.022; prior: 1899 c 149 § 22; RRS § 3413. (ii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iii) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 3 ENFORCEMENT OF INSTRUMENTS

62A.3-301 Person entitled to enforce instrument. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument. [1993 c 229 § 29; 1965 ex.s. c 157 § 3-301. Cf. former RCW 62.01.051; 1955 c 35 § 62.01.051; prior: 1899 c 149 § 51; RRS § 3442.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-302 Holder in due course. (a) Subject to subsection (c) and RCW 62A.3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in RCW 62A.3-306, and (vi) without notice that any party has a defense or claim in recoupment described in RCW 62A.3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under RCW 62A.3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions. [1993 c 229 § 30; 1965 ex.s. c 157 § 3-302. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-303 Value and consideration. (a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration. [1993 c 229 § 31; 1965 ex.s. c 157 § 3-303. Cf. former RCW sections: (i) RCW 62.01.025 through 62.01.027; 1955 c 35 §§ 62.01.025 through 62.01.027; prior: 1899 c 149 §§ 25 through 27; RRS §§ 3416 through 3418. (ii) RCW 62.01.054; 1955 c 35 § 62.01.054; prior: 1899 c 149 § 54; RRS § 3445.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-304 Overdue instrument. (a) An instrument payable on demand becomes overdue at the earliest of the following times:

- (1) On the day after the day demand for payment is duly made;
 - (2) If the instrument is a check, 90 days after its date;
- or
- (3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

- (1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.
- (2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.
- (3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal. [1993 c 229 § 32; 1965 ex.s. c 157 § 3-304. Cf. former RCW sections: (i) RCW 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; 1955 c 35 §§ 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; prior: 1899 c 149 §§ 45, 52, 53, 55, and 56; RRS §§ 3436, 3443, 3444, 3446, and 3447 (ii) RCW 62.01.0195; 1955 c 35 § 62.01.0195; prior: 1927 c 296 § 1; 1925 ex.s. c 54 § 1; RRS § 3410-1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-305 Defenses and claims in recoupment. (a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (RCW 62A.3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity. [1993 c 229 § 33; 1965 ex.s. c 157 § 3-305. Cf. former RCW sections: (i) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (ii) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (iii) RCW 62.01.057; 1955 c 35 § 62.01.057; prior: 1899 c 149 § 57; RRS § 3448.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-306 Claims to an instrument. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument. [1993 c 229 § 34;

1965 ex.s. c 157 § 3-306. Cf. former RCW sections: (i) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (ii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iv) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-307 Notice of breach of fiduciary duty. (a)

In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in subsection (a)(1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person. [1993 c 229 § 35; 1965 ex.s. c 157 § 3-307. Cf. former RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-308 Proof of signatures and status as holder in due course. (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be

authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under RCW 62A.3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under RCW 62A.3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim. [1993 c 229 § 36.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-309 Enforcement of lost, destroyed, or stolen instrument. (a)

A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, RCW 62A.3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. [1993 c 229 § 37.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-310 Effect of instrument on obligation for which taken. (a)

Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money

equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in subsection (b)(4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case. [1993 c 229 § 38.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-311 Accord and satisfaction by use of instrument. (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This

subsection (c)(2) does not apply if the claimant is an organization that sent a statement complying with subsection (c)(1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim. [1993 c 229 § 39.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check. (a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable [amenable] to service of process.

(4) "Obligated bank" means the insurer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to RCW 62A.4-302(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under this section. [1993 c 229 § 40.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 4 LIABILITY OF PARTIES

62A.3-401 Signature. (a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under RCW 62A.3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing. [1993 c 229 § 41; 1965 ex.s. c 157 § 3-401. Cf. former RCW 62.01.018; 1955 c 35 § 62.01.018; prior: 1899 c 149 § 18; RRS § 3409.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-402 Signature by representative. (a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person. [1993 c 229 § 42; 1965 ex.s. c 157 § 3-402. Cf. former RCW sections: (i) RCW 62.01.017(6); 1955 c 149 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.063; 1955 c 149 § 62.01.063; prior: 1899 c 149 § 63; RRS § 3454.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-403 Unauthorized signature. (a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article. [1993 c 229 § 43; 1965 ex.s. c 157 § 3-403. Cf. former RCW sections: RCW 62.01.019 through 62.01.021; 1955 c 35 §§ 62.01.019 through 62.01.021; prior: 1899 c 149 §§ 19 through 21; RRS §§ 3410 through 3412.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-404 Impostors; fictitious payees. (a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (RCW 62A.3-110 (a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss. [1993 c 229 § 44; 1965 ex.s. c 157 § 3-404. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-405 Employer's responsibility for fraudulent indorsement by employee. (a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from the fraud, the

person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person. [1993 c 229 § 45; 1965 ex.s. c 157 § 3-405. Cf. former RCW 62.01.009(3); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-406 Negligence contributing to forged signature or alteration of instrument. (a) A person whose failure to exercise ordinary care contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded. [1993 c 229 § 46; 1965 ex.s. c 157 § 3-406.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-407 Alteration. (a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed. [1993 c 229 § 47; 1965 ex.s. c 157 § 3-407. Cf. former RCW sections: (i) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (ii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (iii) RCW 62.01.124; 1955 c 35 § 62.01.124; prior: 1899 c 149 § 124; RRS § 3514. (iv) RCW

62.01.125; 1955 c 35 § 62.01.125; prior: 1899 c 149 § 125; RRS § 3515.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-408 Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it. [1993 c 229 § 48; 1965 ex.s. c 157 § 3-408. Cf. former RCW sections: (i) RCW 62.01.024; 1955 c 35 § 62.01.024; prior: 1899 c 149 § 24; RRS § 3415. (ii) RCW 62.01.025; 1955 c 35 § 62.01.025; prior: 1899 c 149 § 25; RRS § 3416. (iii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-409 Acceptance of draft; certified check. (a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check. [1993 c 229 § 49; 1965 ex.s. c 157 § 3-409. Cf. former RCW sections: (i) RCW 62.01.127; 1955 c 35 § 62.01.127; prior: 1899 c 149 § 127; RRS § 3517. (ii) RCW 62.01.189; 1955 c 35 § 62.01.189; prior: 1899 c 149 § 189; RRS § 3579.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-410 Acceptance varying draft. (a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged. [1993 c 229 § 50; 1965 ex.s. c 157 § 3-410. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW

62.01.132 through 62.01.138; 1955 c 35 §§ 62.01.132 through 62.01.138; prior: 1899 c 149 §§ 132 through 138; RRS §§ 3522 through 3528. (iii) RCW 62.01.161 through 62.01.170; 1955 c 35 §§ 62.01.161 through 62.01.170; prior: 1899 c 149 §§ 161 through 170; RRS §§ 3551 through 3560. (iv) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-411 Refusal to pay cashier's checks, teller's checks, and certified checks. (a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law. [1993 c 229 § 51; 1965 ex.s. c 157 § 3-411. Cf. former RCW sections: (i) RCW 62.01.187; 1955 c 35 § 62.01.187; prior: 1899 c 149 § 187; RRS § 3577. (ii) RCW 62.01.188; 1955 c 35 § 62.01.188; prior: 1899 c 149 § 188; RRS § 3578.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-412 Obligation of issuer of note or cashier's check. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under RCW 62A.3-415. [1993 c 229 § 52; 1965 ex.s. c 157 § 3-412. Cf. former RCW sections: RCW 62.01.139 through 62.01.142; 1955 c 35 §§ 62.01.139 through 62.01.142; prior: 1899 c 149 §§ 139 through 142; RRS §§ 3529 through 3532.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-413 Obligation of acceptor. (a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of

the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under RCW 62A.3-414 or 62A.3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course. [1993 c 229 § 53; 1965 ex.s. c 157 § 3-413. Cf. former RCW sections: RCW 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 60 through 62; RRS §§ 3451 through 3453.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-414 Obligation of drawer. (a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under RCW 62A.3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under RCW 62A.3-415 (a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depository bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds. [1993 c 229 § 54; 1965 ex.s. c 157 § 3-414. Cf. former RCW sections: (i) RCW 62.01.038; 1955 c 35 § 62.01.038; prior: 1899 c 149 § 38; RRS § 3429. (ii) RCW 62.01.044; 1955 c 35 § 62.01.044; prior: 1899 c 149 § 44; RRS § 3435. (iii) RCW 62.01.066 through 62.01.068; 1955 c 35 §§ 62.01.066

through 62.01.068; prior: 1899 c 149 §§ 66 through 68; RRS §§ 3457 through 3459.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-415 Obligation of indorser. (a) Subject to subsections (b), (c), (d), and (e) and to RCW 62A.3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by RCW 62A.3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged. [1993 c 229 § 55; 1965 ex.s. c 157 § 3-415. Cf. former RCW sections: (i) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (ii) RCW 62.01.029; 1955 c 35 § 62.01.029; prior: 1899 c 149 § 29; RRS § 3420. (iii) RCW 62.01.064; 1955 c 35 § 62.01.064; prior: 1899 c 149 § 64; RRS § 3455.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-416 Transfer warranties. (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus

expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 56; 1965 ex.s. c 157 § 3-416.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-417 Presentment warranties. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 57; 1965 ex.s. c 157 § 3-417. Cf. former RCW sections: (i) RCW 62.01.065; 1955 c 35 § 62.01.065; prior: 1899 c 149 § 65; RRS § 3456. (ii) RCW 62.01.066; 1955 c 35 § 62.01.066; prior: 1899 c 149 § 66; RRS § 3457. (iii) RCW 62.01.069; 1955 c 35 § 62.01.069; prior: 1899 c 149 § 69; RRS § 3460.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-418 Payment or acceptance by mistake. (a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to RCW 62A.4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by RCW 62A.3-417 or 62A.4-407.

(d) Notwithstanding RCW 62A.4-213, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument. [1993 c 229 § 58; 1965 ex.s. c 157 § 3-418. Cf. former RCW 62.01.062; 1955 c 35 § 62.01.062; prior: 1899 c 149 § 62; RRS § 3453.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-419 Instruments signed for accommodation.

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in RCW 62A.3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party. [1993 c 229 § 59; 1965 ex.s. c 157 § 3-419. Cf. former RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-420 Conversion of instrument.

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the

instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out. [1993 c 229 § 60.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 5 DISHONOR

62A.3-501 Presentment. (a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearinghouse rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour. [1993 c 229 § 61; 1965 ex.s. c 157 § 3-501. Cf. former RCW sections: RCW 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; 1955 c 35 §§ 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; prior: 1899 c 149 §§ 70, 89, 118, 129, 143, 144, 150, 151, 152, 157, 158, and 186; RRS §§ 3461, 3479, 3508, 3519, 3533, 3534, 3540, 3541, 3542, 3547, 3548, and 3576.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-502 Dishonor. (a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and subsection (a)(2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under RCW 62A.4-301 or 62A.4-302, or becomes accountable for the amount of the check under RCW 62A.4-302.

(2) If a draft is payable on demand and subsection (b)(1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b) (2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by subsection (b) (2), (3), and (4).

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment; or

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under RCW 62A.3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored. [1993 c 229 § 62; 1965 ex.s. c 157 § 3-502. Cf. former RCW sections: RCW 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; 1955 c 35 §§ 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; prior: 1899 c 149 §§ 7, 70, 89, 144, 150, 152, and 186; RRS §§ 3398, 3461, 3479, 3534, 3540, 3542, and 3576.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-503 Notice of dishonor. (a) The obligation of an indorser stated in RCW 62A.3-415(a) and the obligation of a drawer stated in RCW 62A.3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under RCW 62A.3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to RCW 62A.3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs. [1993 c 229 § 63; 1965 ex.s. c 157 § 3-503. Cf. former RCW sections: (i) RCW 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; 1955 c 35 §§ 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; prior: 1899 c 149 §§ 71, 72, 75, 86, 144, 145, 146, 186, and 193; RRS §§ 3462, 3463, 3466, 3476, 3534, 3535, 3536, 3576, and 3583. (ii) RCW 62.01.085; 1955 c 35 § 62.01.085; prior: 1915 c 173 § 1; 1899 c 149 § 85; RRS § 3475 1/2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-504 Excused presentment and notice of dishonor. (a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay

or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate. [1993 c 229 § 64; 1965 ex.s. c 157 § 3-504. Cf. former RCW sections: RCW 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; 1955 c 35 §§ 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; prior: 1899 c 149 §§ 72, 73, 77, 78, and 145; RRS §§ 3463, 3464, 3468, 3469, and 3535.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-505 Evidence of dishonor. (a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) that purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice-consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties. [1993 c 229 § 65; 1965 ex.s. c 157 § 3-505. Cf. former RCW sections: (i) RCW 62.01.072(3); 1955 c 35 § 62.01.072; prior: 1899 c 149 § 72; RRS § 3463. (ii) RCW 62.01.074; 1955 c 35 § 62.01.074; prior: 1899 c 149 § 74; RRS § 3465. (iii) RCW 62.01.133; 1955 c 35 § 62.01.133; prior: 1899 c 149 § 133; RRS § 3523.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-512 Credit cards—As identification—In lieu of deposit. A person may not record the number of a credit card given as identification under *RCW 62A.3-501(a)(2) or given as proof of credit worthiness when payment for goods or services is made by check or draft. Nothing in this section prohibits the recording of the number of a credit card given in lieu of a deposit to secure payment in the event of

a default, loss, damage, or other occurrence. [1993 c 229 § 66; 1990 c 203 § 2.]

***Reviser's note:** The reference to RCW 62A.3-501(a)(2) appears erroneous. Reference to RCW 62A.3-501(b)(2) was apparently intended.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim. (a) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the payee or holder of the check is entitled to collect a reasonable handling fee for each instrument. If the check is not paid within fifteen days and after the holder of the check sends a notice of dishonor as provided by RCW 62A.3-520 to the drawer at the drawer's last known address, and if the instrument does not provide for the payment of interest or collection costs and attorneys' fees, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and cost of collection not to exceed forty dollars or the face amount of the check, whichever is less. In addition, in the event of court action on the check, the court, after notice and the expiration of the fifteen days, shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the holder of the check. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(b)(1) Subsequent to the commencement of an action on the check (subsection (a)) but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(2) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims. [1995 c 187 § 1; 1993 c 229 § 67; 1991 c 168 § 1; 1986 c 128 § 1; 1981 c 254 § 1; 1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Savings—Severability—1967 ex.s. c 23: See notes following RCW 19.52.005.

62A.3-520 Statutory form for notice of dishonor. The notice of dishonor shall be sent by mail to the drawer at the drawer's last known address, and the notice shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to in the amount of has not been accepted for payment by, which is the drawee bank designated on your check. This check is dated, and it is numbered, No.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

(1) Costs of collecting the amount of the check, including an attorney's fee which will be set by the court;

(2) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and

(3) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within fifteen days after the date this letter is postmarked.

You are advised to make your payment to at the following address:

[1993 c 229 § 68; 1991 c 168 § 2; 1986 c 128 § 2; 1981 c 254 § 2; 1969 c 62 § 2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-522 Notice of dishonor—Affidavit of service by mail. In addition to sending a notice of dishonor to the drawer of the check under RCW 62A.3-520, the holder of the check shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be attached to a copy of the notice of dishonor and must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I,, hereby certify that on the day of, 19., a copy of the foregoing Notice was served on by mailing via the United States Postal Service, postage prepaid, at, Washington.

Dated:
(Signature)

The holder shall retain the affidavit with the check but shall file a copy of the affidavit with the clerk of the court in which an action on the check is commenced. [1993 c 229 § 69; 1981 c 254 § 3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-525 Consequences for failing to comply with requirements. No interest, collection costs, and attorneys' fees, except handling fees, are recoverable on any dishonored check under the provisions of RCW 62A.3-515 where the holder of the check or any agent, employee, or assign of the holder has demanded:

(1) Interest or collection costs in excess of that provided by RCW 62A.3-515; or

(2) Interest or collection costs prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520; or

(3) Attorneys' fees either without having the fees set by the court, or prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520. [1993 c 229 § 70; 1981 c 254 § 4; 1969 c 62 § 3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

**PART 6
DISCHARGE AND PAYMENT**

62A.3-601 Discharge and effect of discharge. (a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge. [1993 c 229 § 71; 1965 ex.s. c 157 § 3-601. Cf. former RCW sections: RCW 62.01.119 through 62.01.121; 1955 c 35 §§ 62.01.119 through 62.01.121; prior: 1899 c 149 §§ 119 through 121; RRS §§ 3509 through 3511.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-602 Payment. (a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under RCW 62A.3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) A claim to the instrument under RCW 62A.3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument. [1993 c 229 § 72; 1965 ex.s. c 157 § 3-602. Cf. former RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-603 Tender of payment. (a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after

the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument. [1993 c 229 § 73; 1965 ex.s. c 157 § 3-603. Cf. former RCW sections: (i) RCW 62.01.051, 62.01.088, 62.01.119, and 62.01.121; 1955 c 35 §§ 62.01.051, 62.01.088, 62.01.119, and 62.01.121; prior: 1899 c 149 §§ 51, 88, 119, and 121; RRS §§ 3442, 3478, 3509, and 3511. (ii) RCW 62.01.171 through 62.01.177; 1955 c 35 §§ 62.01.171 through 62.01.177; prior: 1899 c 149 §§ 171 through 177; RRS §§ 3561 through 3567. (iii) Subd. (3) cf. former RCW 30.20.090; 1961 c 280 § 4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-604 Discharge by cancellation or renunciation. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement. [1993 c 229 § 74; 1965 ex.s. c 157 § 3-604. Cf. former RCW sections: (i) RCW 62.01.070; 1955 c 35 § 62.01.070; prior: 1899 c 149 § 70; RRS § 3461. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-605 Discharge of indorsers and accommodation parties. (a) In this section, the term "indorser" includes a drawer having the obligation described in RCW 62A.3-414(d).

(b) Discharge, under RCW 62A.3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommoda-

tion party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under RCW 62A.3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. [1993 c 229 § 75; 1965 ex.s. c 157 § 3-605. Cf. former RCW sections: RCW 62.01.048, 62.01.119(3), 62.01.120(2), 62.01.122, and 62.01.123; 1955 c 35 §§ 62.01.048, 62.01.119, 62.01.120, 62.01.122, and 62.01.123; prior: 1899 c 149 §§ 48, 119, 120, 122, and 123; RRS §§ 3439, 3509, 3510, 3512, and 3513.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Article 4

BANK DEPOSITS AND COLLECTIONS

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Reviser's note: Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

PART 1

GENERAL PROVISIONS AND DEFINITIONS

62A.4-101 Short title. This Article may be cited as Uniform Commercial Code—Bank Deposits and Collections. [1993 c 229 § 77; 1965 ex.s. c 157 § 4-101.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-102 Applicability. (a) To the extent that items within this Article are also within Articles 3 and 8, they are subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [1993 c 229 § 78; 1965 ex.s. c 157 § 4-102.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-103 Variation by agreement; measure of damages; action constituting ordinary care. (a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence. [1993 c 229 § 79; 1965 ex.s. c 157 § 4-103. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1931 c 10 § 1; 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-104 Definitions and index of definitions. (a) In this Article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (RCW 62A.8-102) or instructions for uncertificated securities (RCW 62A.8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in RCW 62A.3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	RCW 62A.4-110.
"Bank"	RCW 62A.4-105.
"Collecting bank"	RCW 62A.4-105.
"Depository bank"	RCW 62A.4-105.
"Intermediary bank"	RCW 62A.4-105.
"Payor bank"	RCW 62A.4-105.
"Presenting bank"	RCW 62A.4-105.
"Presentment notice"	RCW 62A.4-110.

(c) The following definitions in other Articles apply to this Article:

"Acceptance"	RCW 62A.3-409.
"Alteration"	RCW 62A.3-407.
"Cashier's check"	RCW 62A.3-104.
"Certificate of deposit"	RCW 62A.3-104.
"Certified check"	RCW 62A.3-409.
"Check"	RCW 62A.3-104.
"Draft"	RCW 62A.3-104.
"Good faith"	RCW 62A.3-103.
"Holder in due course"	RCW 62A.3-302.
"Instrument"	RCW 62A.3-104.
"Notice of dishonor"	RCW 62A.3-503.
"Order"	RCW 62A.3-103.
"Ordinary care"	RCW 62A.3-103.
"Person entitled to enforce"	RCW 62A.3-301.
"Presentment"	RCW 62A.3-501.
"Promise"	RCW 62A.3-103.
"Prove"	RCW 62A.3-103.
"Teller's check"	RCW 62A.3-104.
"Unauthorized signature"	RCW 62A.3-403.

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1995 c 48 § 56; 1993 c 229 § 80; 1981 c 122 § 1; 1965 ex.s. c 157 § 4-104. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Construction—1981 c 122: "Nothing in this 1981 amendatory act shall be construed to preclude any bank from being open to the public for carrying on its banking functions on Saturdays or Sundays." [1981 c 122 § 2.] "this 1981 amendatory act" consists of the 1981 amendment to RCW 62A.4-104.

62A.4-105 "Bank"; "depository bank"; "payor bank"; "intermediary bank"; "collecting bank"; "presenting bank". In this Article:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "Depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "Payor bank" means a bank that is the drawee of a draft;

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank;

(5) "Collecting bank" means a bank handling the item for collection except the payor bank;

(6) "Presenting bank" means a bank presenting an item except a payor bank. [1993 c 229 § 81; 1965 ex.s. c 157 § 4-105. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-106 Payable through or payable at bank; collecting bank. (a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank. [1993 c 229 § 82; 1965 ex.s. c 157 § 4-106. Cf. former RCW sections: (i) RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1. (ii) RCW 30.40.030 through 30.40.050; 1955 c 33 §§ 30.40.030 through 30.40.050; prior: 1939 c 59 §§ 1 through 3; RRS §§ 3252-6 through 3252-8.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-107 Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this Article and under Article 3. [1993 c 229 § 83; 1965 ex.s. c 157 § 4-107.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-108 Time of receipt of items. (a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [1993 c 229 § 84; 1965 ex.s. c 157 § 4-108.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-109 Delays. (a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this Title for a period not exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require. [1993 c 229 § 85; 1965 ex.s. c 157 § 4-109.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-110 Electronic presentment. (a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates. [1993 c 229 § 86.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-111 Statute of limitations. An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues. [1993 c 229 § 87.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 2 COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

62A.4-201 Status of collecting bank as agent and provisional status of credits; applicability of article; item indorsed "pay any bank". (a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly es-

establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(1) Returned to the customer initiating collection; or

(2) Specially indorsed by a bank to a person who is not a bank. [1993 c 229 § 88; 1965 ex.s. c 157 § 4-201. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-202 Responsibility for collection or return; when action timely. (a) A collecting bank must exercise ordinary care in:

(1) Presenting an item or sending it for presentment;

(2) Sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(3) Settling for an item when the bank receives final settlement; and

(4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit. [1993 c 229 § 89; 1965 ex.s. c 157 § 4-202. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-203 Effect of instructions. Subject to Article 3 concerning conversion of instruments (RCW 62A.3-420) and restrictive indorsements (RCW 62A.3-206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor. [1993 c 229 § 90; 1965 ex.s. c 157 § 4-203. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-204 Methods of sending and presenting; sending directly to payor bank. (a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the

number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) An item directly to the payor bank;

(2) An item to a non-bank payor if authorized by its transferor; and

(3) An item other than documentary drafts to a non-bank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made. [1993 c 229 § 91; 1965 ex.s. c 157 § 4-204. Cf. former RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-205 Depository bank holder of unindorsed item. If a customer delivers an item to a depository bank for collection:

(a) The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of RCW 62A.3-302, it is a holder in due course; and

(b) The depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account. [1993 c 229 § 92; 1965 ex.s. c 157 § 4-205.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-206 Transfer between banks. Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank. [1993 c 229 § 93; 1965 ex.s. c 157 § 4-206.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-207 Transfer warranties. (a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (RCW 62A.3-305(a)) of any party that can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was

transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in RCW 62A.3-115 and 62A.3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 94; 1965 ex.s. c 157 § 4-207. Cf. former RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-208 Presentment warranties. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under

RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 95; 1965 ex.s. c 157 § 4-208. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-209 Encoding and retention warranties. (a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach. [1993 c 229 § 96; 1965 ex.s. c 157 § 4-209. Cf. former RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-210 Security interest of collecting bank in items, accompanying documents and proceeds. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable (subsection (1) of RCW 62A.9-203);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds. [1993 c 229 § 97; 1965 ex.s. c 157 § 4-210.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-211 When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. [1993 c 229 § 98; 1965 ex.s. c 157 § 4-211. Cf. former RCW sections: (i) RCW 30.52.090; 1955 c 33 § 30.52.090; prior: 1929 c 203 § 9; RRS § 3292-9. (ii) RCW 30.52.100; 1955 c 33 § 30.52.100; prior: 1929 c 203 § 10; RRS § 3292-10.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-212 Presentment by notice of item not payable by, through, or at a bank; liability of drawer or indorser. (a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under RCW 62A.3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it

notice of the facts. [1993 c 229 § 99; 1965 ex.s. c 157 § 4-212. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-213 Medium and time of settlement by bank.

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to RCW 62A.4A-406(1) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item. [1993 c 229 § 100; 1965 ex.s. c 157 § 4-213. Cf. former RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-214 Right of charge-back or refund; liability of collecting bank; return of item. (a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from

its customer, whether or not it is able to return the items, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depository bank that is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301).

(d) The right to charge-back is not affected by:

(1) Previous use of a credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in a foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [1993 c 229 § 101; 1965 ex.s. c 157 § 4-214. Cf. former RCW 30.52.130; 1955 c 33 § 30.52.130; prior: 1929 c 203 § 13; RRS § 3292-13.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Insolvency—Preferences prohibited: RCW 30.44.110.

62A.4-215 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal. (a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) Paid the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) If the bank is both the depository bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit. [1993 c 229 § 102.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-216 Insolvency and preference. (a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank. [1993 c 229 § 103.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

62A.4-301 Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank. (a) If a payor bank settles for a demand item (other than a documentary draft) presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the

settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

(1) Returns the item; or
 (2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions. [1993 c 229 § 104; 1965 ex.s. c 157 § 4-301. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-302 Payor bank's responsibility for late return of item. (a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (RCW 62A.4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank. [1993 c 229 § 105; 1965 ex.s. c 157 § 4-302. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-303 When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified. (a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the

bank to act thereon expires or the setoff is exercised after the earliest of the following:

(1) The bank accepts or certifies the item;

(2) The bank pays the item in cash;

(3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

(4) The bank becomes accountable for the amount of the item under RCW 62A.4-302 dealing with the payor bank's responsibility for late return of items; or

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order. [1993 c 229 § 106; 1965 ex.s. c 157 § 4-303.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 4 RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

62A.4-401 When bank may charge customer's account. (a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in RCW 62A.4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in RCW 62A.4-303. A bank may not collect a fee from a customer based on the customer's giving notice to the bank of a postdating. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under RCW 62A.4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) The original terms of the altered item; or

(2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has

notice that the completion was improper. [1993 c 229 § 107; 1965 ex.s. c 157 § 4-401.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-402 Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.

(a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful. [1993 c 229 § 108; 1965 ex.s. c 157 § 4-402.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-403 Customer's right to stop payment; burden of proof of loss. (a) A customer or any other person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in RCW 62A.4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop-payment order or order to close the account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under RCW 62A.4-402. [1993 c 229 § 109; 1965 ex.s. c 157 § 4-403. Cf. former RCW sections: (i) RCW 30.16.030; 1959 c 106 § 4; 1955 c 33 § 30.16.030; prior: 1923 c 114 §§ 1, part, and 2; RRS §§ 3252-1, part,

and 3252-2. (ii) RCW 30.16.040; 1955 c 33 § 30.16.040; prior: 1923 c 114 §§ 1, part, and 3; RRS §§ 3252-1, part, and 3252-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-404 Bank not obligated to pay check more than six months old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [1965 ex.s. c 157 § 4-404. Cf. former RCW 30.16.050; 1955 c 33 § 30.16.050; prior: 1923 c 114 §§ 1, part, and 5; RRS §§ 3252-1, part, and 3252-5.]

62A.4-405 Death or incompetence of customer.

(a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account. [1993 c 229 § 110; 1965 ex.s. c 157 § 4-405. Cf. former RCW 30.20.030; 1955 c 33 § 30.20.030; prior: 1917 c 80 § 43; RRS § 3250.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration.

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or copies of items

with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with RCW 30.22.230. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature or any alteration on the face or back of the item or does not within one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies. [1997 c 53 § 1; 1995 c 107 § 1; 1993 c 229 § 111; 1991 sp.s. c 19 § 1; 1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16.020; prior: 1917 c 80 § 45; RRS § 3252.]

Effective date—1995 c 107: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 107 § 2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Emergency—Effective date—1967 c 114. "This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and sections 1 through 11 and 13 through 16 shall take effect on June 30, 1967, and section 12 shall take effect immediately." [1967 c 114 § 17.]

Reviser's note: Sections 1 through 11 and 13 through 16 are codified as RCW 15.48.270, 15.48.280, 15.48.290, 62A.2-403, 62A.2-706, 62A.4-406, 62A.6-102, 62A.6-109, 62A.9-302, 62A.9-403, 62A.9-404, 62A.9-405, 62A.9-406, 62A.9-407, and 62A.9-408. Section 12 is codified as RCW 62A.9-409.

62A.4-407 Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

(1) Of any holder in due course on the item against the drawer or maker;

(2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [1993 c 229 § 112; 1965 ex.s. c 157 § 4-407.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 5

COLLECTION OF DOCUMENTARY DRAFTS

62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. [1993 c 229 § 113; 1965 ex.s. c 157 § 4-501.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-502 Presentment of "on arrival" drafts. If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. [1993 c 229 § 114; 1965 ex.s. c 157 § 4-502.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need. Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions. However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses. [1993 c 229 § 115; 1965 ex.s. c 157 § 4-503. Cf. former RCW 62.01.131(3); 1955 c 35 § 62.01.131; prior: 1899 c 149 § 131; RRS § 3521.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses. (a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [1993 c 229 § 116; 1965 ex.s. c 157 § 4-504.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Article 4A

FUNDS TRANSFERS

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Reviser's note: Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

PART 1 SUBJECT MATTER AND DEFINITIONS

62A.4A-101 Short title. This Article may be cited as the Uniform Commercial Code—Funds Transfers. [1991 sp.s. c 21 § 4A-101.]

62A.4A-102 Subject matter. Except as otherwise provided in RCW 62A.4A-108 this Article applies to funds transfers defined in RCW 62A.4A-104. [1991 sp.s. c 21 § 4A-102.]

62A.4A-103 Payment order—Definitions. (1) In this Article:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition of payment to the beneficiary other than time of payment;

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank. [1991 sp.s. c 21 § 4A-103.]

62A.4A-104 Funds transfer—Definitions. In this Article:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means (a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (b) the originator if the originator is a bank. [1991 sp.s. c 21 § 4A-104.]

62A.4A-105 Other definitions. (1) In this Article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of the account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.4A-209
"Beneficiary"	RCW 62A.4A-103
"Beneficiary's bank"	RCW 62A.4A-103
"Executed"	RCW 62A.4A-301
"Execution date"	RCW 62A.4A-301
"Funds transfer"	RCW 62A.4A-104
"Funds-transfer system rule"	RCW 62A.4A-501
"Intermediary bank"	RCW 62A.4A-104
"Originator"	RCW 62A.4A-104
"Originator's bank"	RCW 62A.4A-104
"Payment by beneficiary's bank to beneficiary"	RCW 62A.4A-405
"Payment by originator to beneficiary"	RCW 62A.4A-406
"Payment by sender to receiving bank"	RCW 62A.4A-403
"Payment date"	RCW 62A.4A-401
"Payment order"	RCW 62A.4A-103
"Receiving bank"	RCW 62A.4A-103
"Security procedure"	RCW 62A.4A-201
"Sender"	RCW 62A.4A-103

(3) The following definitions in Article 4 (RCW 62A.4-101 through 62A.4-504) apply to this Article:

"Clearing house"	*section 4-104 of this act
"Item"	*section 4-104 of this act
"Suspends payments"	*section 4-104 of this act

(4) In addition to Article 1 [In addition, Article 1] (RCW 62A.1-101 through 62A.1-208) contains general definitions and principles of construction and interpretation applicable throughout this Article. [1991 sp.s. c 21 § 4A-105.]

*Reviser's note: The references to "section 4-104 of this act" are incorrect. RCW 62A.4-104 was apparently intended.

62A.4A-106 Time payment order is received. (1)

The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in RCW 62A.1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may

apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article. [1991 sp.s. c 21 § 4A-106.]

62A.4A-107 Federal reserve regulations and operating circulars. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this Article to the extent of the inconsistency. [1991 sp.s. c 21 § 4A-107.]

62A.4A-108 Exclusion of consumer transactions governed by federal law. This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, P.L. 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et seq.) as amended from time to time. [1991 sp.s. c 21 § 4A-108.]

PART 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

62A.4A-201 Security procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (1) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (2) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure. [1991 sp.s. c 21 § 4A-201.]

62A.4A-202 Authorized and verified payment orders. (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (a) the security procedure is a commercially reasonable method of providing security

against unauthorized payment orders, and (b) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (a) the security procedure was chosen [by] the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (b) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name, and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) of this section, or it is effective as the order of the customer under subsection (2) of this section.

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and RCW 62A.4A-203(1)(a), rights and obligations arising under this section or RCW 62A.4A-203 may not be varied by agreement. [1991 sp.s. c 21 § 4A-202.]

62A.4A-203 Unenforceability of certain verified payment orders. (1) If an accepted payment order is not, under RCW 62A.4A-201(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to RCW 62A.4A-202(2), the following rules apply.

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-203.]

62A.4A-204 Refund of payment and duty of customer to report with respect unauthorized payment order. (1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (a) not authorized and not effective as the order of the customer under RCW 62A.4A-202, or (b) not enforceable, in whole or in part, against the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) of this section may be fixed by agreement as stated in RCW 62A.1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement. [1991 sp.s. c 21 § 4A-204.]

62A.4A-205 Erroneous payment orders. (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (a) erroneously instructed payment to a beneficiary not intended by the sender, (b) erroneously instructed payment in an amount greater than the amount intended by the sender, or (c) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(i) If the sender proves that the sender or a person acting on behalf of the sender pursuant to RCW 62A.4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in (ii) and (iii) of this subsection.

(ii) If the funds transfer is completed on the basis of an erroneous payment order described in (b) or (c) of this subsection, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(iii) If the funds transfer is completed on the basis of a payment order described in (b) of this subsection, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If (a) the sender of an erroneous payment order described in subsection (1) of this section is not obliged to pay all or part of the order, and (b) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-205.]

62A.4A-206 Transmission of payment order through funds-transfer or other communication system.

(1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-206.]

62A.4A-207 Misdescription of beneficiary. (1) Subject to subsection (2) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If (a) a payment order described in subsection (2) of this section is accepted, (b) the originator's payment order described the beneficiary inconsistently by name and number, and (c) the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a) of this section, the following rules apply:

(i) If the originator is a bank, the originator is obliged to pay its order.

(ii) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3) of this section, the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover. [1991 sp.s. c 21 § 4A-207.]

62A.4A-208 Misdescription of intermediary bank or beneficiary's bank. (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a

result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in RCW 62A.4A-302(1)(a). [1991 sp.s. c 21 § 4A-208.]

62A.4A-209 Acceptance of payment order. (1) Subject to subsection (4) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) When the bank (i) pays the beneficiary as stated in RCW 62A.4A-405 (1) or (2) or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) When the bank receives payment of the entire amount of the sender's order pursuant to RCW 62A.4A-403(1) (a) or (b); or

(c) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable

credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (c) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to RCW 62A.4A-211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution. [1991 sp.s. c 21 § 4A-209.]

62A.4A-210 Rejection of payment order. (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (a) any means complying with the agreement is reasonable and (b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to RCW 62A.4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order. [1991 sp.s. c 21 § 4A-210.]

62A.4A-211 Cancellation and amendment of payment order. (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorneys' fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b) of this section. [1991 sp.s. c 21 § 4A-211.]

62A.4A-212 Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that [it] is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in RCW 62A.4A-209 and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement. [1991 sp.s. c 21 § 4A-212.]

PART 3 EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

62A.4A-301 Execution and execution date. (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date. [1991 sp.s. c 21 § 4A-301.]

62A.4A-302 Obligations of receiving bank in execution of payment order. (1) Except as provided in subsections (2) through (4) of this section, if the receiving bank accepts a payment order pursuant to RCW 62A.4A-209(1), the bank has the following obligations in executing the order.

(a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an inter-

mediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may (a) use any funds-transfer system if use of that system is reasonable in the circumstances, and (b) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) of this section applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender, (a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner. [1991 sp.s. c 21 § 4A-302.]

62A.4A-303 Erroneous execution of payment order.

(1) A receiving bank that (a) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (b) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than

the amount of the sender's order is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if (a) that subsection is otherwise satisfied and (b) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution. [1991 sp.s. c 21 § 4A-303.]

62A.4A-304 Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in RCW 62A.4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under RCW 62A.4A-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section. [1991 sp.s. c 21 § 4A-304.]

62A.4A-305 Liability for late or improper execution or failure to execute payment order. (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of RCW 62A.4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of RCW 62A.4A-302 results in (a) noncompletion of the funds transfer, (b) failure to use an intermediary bank designated by the originator, or (c) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses

and interest losses, to the extent not covered by subsection (1) of this section, resulting from the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(5) Reasonable attorneys' fees are recoverable if demand for compensation under subsection (1) or (2) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) of this section and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under subsection (4) of this section is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) of this section may not be varied by agreement. [1991 sp.s. c 21 § 4A-305.]

PART 4 PAYMENT

62A.4A-401 Payment date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank. [1991 sp.s. c 21 § 4A-401.]

62A.4A-402 Obligation of sender to pay receiving bank. (1) This section is subject to RCW 62A.4A-205 and 62A.4A-207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) of this section and to RCW 62A.4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in RCW 62A.4A-204 and 62A.4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in this subsection and an intermediary bank is obliged to refund payment as stated in subsection (4) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in RCW 62A.4A-302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4) of this section.

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) of this section or to receive refund under subsection (4) of this section may not be varied by agreement. [1991 sp.s. c 21 § 4A-402.]

62A.4A-403 Payment by sender to receiving bank.

(1) Payment of the sender's obligation under RCW 62A.4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right

of setoff stated in the second sentence of this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under RCW 62A.4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1) of this section, the time when payment of the sender's obligation under RCW 62A.4A-402 (2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied. [1991 sp.s. c 21 § 4A-403.]

62A.4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary.

(1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorneys' fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (a) [subsection (1) of this section] may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer. [1991 sp.s. c 21 § 4A-404.]

62A.4A-405 Payment by beneficiary's bank to beneficiary. (1) If the beneficiary's bank credits an account of the beneficiary of a payment order payment of the bank's

obligation under RCW 62A.4A-404(1) occurs when and to the extent (a) the beneficiary is notified of the right to withdraw the credit, (b) the bank lawfully applies the credit to a debt of the beneficiary, or (c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under RCW 62A.4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5) of this act [section], if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (a) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (b) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (c) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under RCW 62A.4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (a) nets obligations multilaterally among participants, and (b) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under RCW 62A.4A-406, and (iv) subject to RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(3) because the funds transfer has not been completed. [1991 sp.s. c 21 § 4A-405.]

62A.4A-406 Payment by originator to beneficiary; discharge of underlying obligation. (1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), the

originator of a funds transfer pays the beneficiary of the originator's payment order (a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (b) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(2) If payment under subsection (1) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (a) the payment under subsection (1) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (b) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (c) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (d) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under RCW 62A.4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2) of this section, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary. [1991 sp.s. c 21 § 4A-406.]

PART 5 MISCELLANEOUS PROVISIONS

62A.4A-501 Variation by agreement and effect of funds-transfer system rule. (1) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) "Funds-transfer system rule" means a rule of an association of banks (a) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (b) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with the Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations

of parties other than participating banks using the system to the extent stated in RCW 62A.4A-404(3), 62A.4A-405(4), and 62A.4A-507(3). [1991 sp.s. c 21 § 4A-501.]

62A.4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank. (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at the time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at the time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process. [1991 sp.s. c 21 § 4A-502.]

62A.4A-503 Injunction or restraining order with respect to funds transfer. For proper cause and in compliance with applicable law, a court may restrain (1) a person from issuing a payment order to initiate a funds transfer, (2) an originator's bank from executing the payment order of the originator, or (3) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer. [1991 sp.s. c 21 § 4A-503.]

62A.4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account. (1) If a receiving bank has received more than one payment order of the sender or one or more

payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied. [1991 sp.s. c 21 § 4A-504.]

62A.4A-505 Preclusion of objection to debit of customer's account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer. [1991 sp.s. c 21 § 4A-505.]

62A.4A-506 Rate of interest. (1) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (a) by agreement of the sender and receiving bank, or (b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1) of this section, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank. [1991 sp.s. c 21 § 4A-506.]

62A.4A-507 Choice of law. (1) The following rules apply unless the affected parties otherwise agree or subsection (3) of this section applies;

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in each paragraph of subsection (1) of this section have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) A funds-transfer system rule may select the law of a particular jurisdiction to govern (a) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (b) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to (a) of this subsection is binding on participating banks. A choice of law made pursuant to (b) of this subsection is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) of this section and a choice-of-law rule under subsection (3) of this section, the agreement under subsection (2) of this section prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue. [1991 sp.s. c 21 § 4A-507.]

Article 5 LETTERS OF CREDIT

Sections

62A.5-101	Short title.
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62A.5-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. [1965 ex.s. c 157 § 5-101.]

62A.5-1013 Applicability—Transition provision. Chapter 56, Laws of 1997 applies to a letter of credit that is issued on or after July 27, 1997. Chapter 56, Laws of 1997 does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before July 27, 1997. [1997 c 56 § 1.]

62A.5-1015 Savings—Transition provision. A transaction arising out of or associated with a letter of credit that was issued before July 27, 1997, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by chapter 56, Laws of 1997 as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law. [1997 c 56 § 2.]

62A.5-102 Definitions. (1) The definitions in this section apply throughout this Article unless the context clearly requires otherwise:

(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(f) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in RCW 62A.5-108(5) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned.

(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) Upon payment;

(ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of RCW 62A.5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

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

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or

"Acceptance" RCW 62A.3-409

"Value" RCW 62A.3-303, RCW 62A.4-211.

(3) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article. [1997 c 56 § 3; 1965 ex.s. c 157 § 5-102.]

62A.5-103 Scope. (1) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

(3) With the exception of this subsection, subsections (1) and (4) of this section, RCW 62A.5-102(1) (i) and (j), 62A.5-106(4), and 62A.5-114(4), and except to the extent prohibited in RCW 62A.1-102(3) and 62A.5-117(4), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary. [1997 c 56 § 4; 1965 ex.s. c 157 § 5-103.]

62A.5-104 Formal requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (1) by a signature or (2) in accordance with the agreement of the parties or the standard practice referred to in RCW 62A.5-108(5). [1997 c 56 § 5; 1965 ex.s. c 157 § 5-104.]

62A.5-105 Consideration. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation. [1997 c 56 § 6; 1965 ex.s. c 157 § 5-105.]

62A.5-106 Issuance, amendment, cancellation, and duration. (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued. [1997 c 56 § 7; 1965 ex.s. c 157 § 5-106.]

62A.5-107 Confirmer, nominated person, and adviser. (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the

letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies. [1997 c 56 § 8; 1965 ex.s. c 157 § 5-107.]

62A.5-108 Issuer's rights and obligations. (1) Except as otherwise provided in RCW 62A.5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in RCW 62A.5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(a) To honor;

(b) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(c) To give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in RCW 62A.5-109(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) The performance or nonperformance of the underlying contract, arrangement, or transaction;

(b) An act or omission of others; or

(c) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5) of this section.

(7) If an undertaking constituting a letter of credit under RCW 62A.5-102(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this Article:

(a) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(b) Takes the documents free of claims of the beneficiary or presenter;

(c) Is precluded from asserting a right of recourse on a draft under RCW 62A.3-414 and 62A.3-415;

(d) Except as otherwise provided in RCW 62A.5-110 and 62A.5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(e) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged. [1997 c 56 § 9; 1965 ex.s. c 157 § 5-108.]

62A.5-109 Fraud and forgery. (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(b) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(b) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(c) All of the conditions to entitle a person to the relief under the law of this state have been met; and

(d) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a) of this section. [1997 c 56 § 10; 1965 ex.s. c 157 § 5-109.]

62A.5-110 Warranties. (1) If its presentation is honored, the beneficiary warrants:

(a) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in RCW 62A.5-109(1); and

(b) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(2) The warranties in subsection (1) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles. [1997 c 56 § 11; 1965 ex.s. c 157 § 5-110.]

62A.5-111 Remedies. (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection (1) or (2) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2) of this section.

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the

harm anticipated. [1997 c 56 § 12; 1965 ex.s. c 157 § 5-111.]

62A.5-112 Transfer of letter of credit. (1) Except as otherwise provided in RCW 62A.5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) The transfer would violate applicable law; or

(b) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in RCW 62A.5-108(5) or is otherwise reasonable under the circumstances. [1997 c 56 § 13; 1965 ex.s. c 157 § 5-112. Cf. former RCW sections: (i) RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526. (ii) RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527. (iii) RCW 62.01.150; 1955 c 35 § 62.01.150; prior: 1899 c 149 § 150; RRS § 3540.]

62A.5-113 Transfer by operation of law. (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in RCW 62A.5-108(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) of this section has the consequences specified in RCW 62A.5-108(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of RCW 62A.5-109.

(5) An issuer whose rights of reimbursement are not covered by subsection (4) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2) of this section.

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obliga-

tions as a successor of a beneficiary under this section. [1997 c 56 § 14; 1965 ex.s. c 157 § 5-113.]

62A.5-114 Assignment of proceeds. (1) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law. [1997 c 56 § 15; 1995 c 48 § 57; 1986 c 35 § 54; 1965 ex.s. c 157 § 5-114.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.5-115 Statute of limitations. An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. [1997 c 56 § 16; 1965 ex.s. c 157 § 5-115.]

62A.5-116 Choice of law and forum. (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in RCW 62A.5-104 or by a provision in the person's letter

of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (a) this Article would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2) of this section, (b) the relevant undertaking incorporates rules of custom or practice, and (c) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in RCW 62A.5-103(3).

(4) If there is conflict between this Article and Article 3, 4, 4A, or 9, this Article governs.

(5) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1) of this section. [1997 c 56 § 17; 1981 c 41 § 5; 1965 ex.s. c 157 § 5-116. Subd. (2)(b) cf. former RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.5-117 Subrogation of issuer, applicant, and nominated person. (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1) of this section.

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(b) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(c) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse. [1997 c 56 § 18; 1965 ex.s. c 157 § 5-117.]

Article 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

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**PART 1
GENERAL**

62A.7-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title. [1965 ex.s. c 157 § 7-101.]

62A.7-102 Definitions and index of definitions. (1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate". RCW 62A.7-501.

"Person entitled under the document". RCW 62A.7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". RCW 62A.2-106.

"Overseas". RCW 62A.2-323.

"Receipt" of goods. RCW 62A.2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 7-102. Cf. former RCW sections: (i) RCW 22.04.585(1); 1913 c 99 § 58; RRS § 3644; formerly RCW 22.04.010. (ii) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (iii) RCW 81.32.011; 1961 c 14 § 81.32.011; prior: 1915 c 159 § 1; RRS § 3647; formerly RCW 81.32.020. (iv) RCW 81.32.531(1); 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto. [1965 ex.s. c 157 § 7-103.]

62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. [1965 ex.s. c 157 § 7-104. Cf. former RCW sections: (i) RCW 22.04.030, 22.04.050, and 22.04.060; 1913 c 99 §§ 2, 4, and 5; RRS §§ 3588, 3590, and 3591; prior: 1891 c 134 §§ 5 and 8. (ii) RCW 22.04.040 and 22.04.080; 1913 c 99 §§ 3, 7; RRS §§ 3589, 3593. (iii) RCW 63.04.280 and 63.04.310; 1925 ex.s. c 142 §§ 27 and 30; RRS §§ 5836-27 and 5836-30. (iv) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (v) RCW 81.32.021 through 81.32.051, and 81.32.081; 1961 c 14 §§ 81.32.021 through 81.32.051, and 81.32.081; prior: 1915 c 159 §§ 2 through 5, and 8; RRS §§ 3648 through 3651, and 3654; formerly RCW 81.32.030 through 81.32.060, and 81.32.090. (vi) RCW 81.32.531; 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-105 Construction against negative implication. The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable. [1965 ex.s. c 157 § 7-105.]

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

62A.7-201 Who may issue a warehouse receipt; storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [1965 ex.s. c 157 § 7-201. Cf. former RCW 22.04.020; 1913 c 99 § 1; RRS § 3587; prior: 1891 c 134 § 1.]

62A.7-202 Form of warehouse receipt; essential terms; optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Title and do not impair his obligation of delivery (RCW 62A.7-403) or his duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective. [1965 ex.s. c 157 § 7-202. Cf. former RCW sections: (i) RCW 22.04.030; 1913 c 99 § 2; RRS § 3588; prior: 1891 c 134 § 8. (ii) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589.]

62A.7-203 Liability for non-receipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either

case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. [1965 ex.s. c 157 § 7-203. Cf. former RCW 22.04.210; 1913 c 99 § 20; RRS § 3606.]

62A.7-204 Duty of care; contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in chapters 22.09 and 22.32 RCW. [1981 c 13 § 1; 1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

62A.7-205 Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [1965 ex.s. c 157 § 7-205.]

62A.7-206 Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated

period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (RCW 62A.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. [1965 ex.s. c 157 § 7-206. Cf. former RCW 22.04.350; 1913 c 99 § 34; RRS § 3620.]

62A.7-207 Goods must be kept separate; fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of over-issue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [1965 ex.s. c 157 § 7-207. Cf. former RCW sections: (i) RCW 22.04.230; 1913 c 99 § 22; RRS § 3608; prior: 1891 c 134 § 3. (ii) RCW 22.04.240; 1913 c 99 § 23; RRS § 3609.]

62A.7-208 Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. [1965 ex.s. c 157 § 7-208. Cf. former RCW 22.04.140; 1913 c 99 § 13; RRS § 3599.]

62A.7-209 Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt. A warehouseman's lien as provided in this chapter takes priority over all other liens and perfected or unperfected security interests.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1987 c 395 § 1; 1965 ex.s. c 157 § 7-209. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

62A.7-210 Enforcement of warehouseman's lien.

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commer-

cially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-210. Cf. former RCW sections:

RCW 22.04.340, 22.04.360, and 22.04.370; 1913 c 99 §§ 33, 35, and 36; RRS §§ 3619, 3621, and 3622.]

PART 3
BILLS OF LADING: SPECIAL PROVISIONS

62A.7-301 Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling. (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. [1965 ex.s. c 157 § 7-301. Cf. former RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-302 Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a con-

necting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. [1965 ex.s. c 157 § 7-302.]

62A.7-303 Diversion; reconsignment; change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. [1965 ex.s. c 157 § 7-303.]

62A.7-304 Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [1965 ex.s. c 157 § 7-304. Cf. former RCW 81.32.061; 1961 c 14 § 81.32.061; prior: 1915 c 159 § 6; RRS § 3652; formerly RCW 81.32.070.]

62A.7-305 Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [1965 ex.s. c 157 § 7-305.]

62A.7-306 Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [1965 ex.s. c 157 § 7-306. Cf. former RCW 81.32.161; 1961 c 14 § 81.32.161; prior: 1915 c 159 § 16; RRS § 3662; formerly RCW 81.32.170.]

62A.7-307 Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-307. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

62A.7-308 Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such

notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of RCW 62A.7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-308. Cf. former RCW 22.04.340; 1913 c 99 § 33; RRS § 3619.]

62A.7-309 Duty of care; contractual limitation of carrier's liability. Save as otherwise provided in RCW 81.29.010 and 81.29.020

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [1965 ex.s. c 157 § 7-309. Cf. former RCW 81.32.031; 1961 c 14 § 81.32.031; prior: 1915 c 159 § 3; RRS § 3649; formerly RCW 81.32.040.]

Common carriers—Limitation on liability: Chapter 81.29 RCW.

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

62A.7-401 Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [1965 ex.s. c 157 § 7-401. Cf. former RCW sections: (i) RCW 22.04.210; 1913 c 99 § 20; RRS § 3606. (ii) RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-402 Duplicate receipt or bill; overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. [1965 ex.s. c 157 § 7-402. Cf. former RCW sections: (i) RCW 22.04.070; 1913 c 99 § 6; RRS § 3592; prior: 1886 p 121 § 5. (ii) RCW 81.32.071; 1961 c 14 § 81.32.071; prior: 1915 c 159 § 7; RRS § 3653; formerly RCW 81.32.080.]

62A.7-403 Obligation of warehouseman or carrier to deliver; excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (RCW 62A.2-705);

(e) a diversion, reassignment or other disposition pursuant to the provisions of this Article (RCW 62A.7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under RCW 62A.7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. [1965 ex.s. c 157 § 7-403. Cf. former RCW sections: (i) RCW 22.04.090, and 22.04.100; 1913 c 99 §§ 8 and 9; RRS §§ 3594, and 3595; prior: 1891 c 134 §§ 6, and 7. (ii) RCW 22.04.110, 22.04.130, 22.04.170, and 22.04.200; 1913 c 99 §§ 10, 12, 16, and 19; RRS §§ 3596, 3598, 3602, and 3605. (iii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iv) RCW 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1961 c 14 §§ 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1915 c 159 §§ 11 through 15, 19, and 22; RRS §§ 3657 through 3661, 3665, and 3668; formerly RCW 81.32.120 through 81.32.160, 81.32.200, and 81.32.230.]

62A.7-404 No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. [1965 ex.s. c 157 § 7-404. Cf. former RCW sections: (i) RCW 22.04.110; 1913 c 99 § 10; RRS § 3596. (ii) RCW 81.32.131; 1961 c 14 § 81.32.131; prior: 1915 c 159 § 13; RRS § 3659; formerly RCW 81.32.140.]

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

62A.7-501 Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [1965 ex.s. c 157 § 7-501. Cf. former RCW sections: (i) RCW 22.04.380 through 22.04.410, and 22.04.480; 1913 c 99 §§ 37 through 40, and 47; RRS §§ 3623 through 3626, and 3633. (ii) RCW 63.04.290, 63.04.300, 63.04.320, 63.04.330, and 63.04.390; 1925 ex.s. c 142 §§ 28, 29, 31, 32, and 38; RRS §§ 5836-28, 5836-29, 5836-31, 5836-32 and 5836-38. (iii) RCW 81.32.281 through 81.32.311, and 81.32.381; 1961 c 14 §§ 81.32.281 through 81.32.311, and 81.32.381; prior: 1915 c 159 §§ 28 through 31, and 38; RRS §§ 3674 through 3677, and 3684; formerly RCW 81.32.370 through 81.32.400, and 81.32.470.]

62A.7-502 Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of RCW 62A.7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

- (a) title to the document;
- (b) title to the goods;
- (c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [1965 ex.s. c 157 § 7-502. Cf. former RCW sections: (i) RCW 22.04.420, and 22.04.480

through 22.04.500; 1913 c 99 §§ 41, and 47 through 49; RRS §§ 3627. and 3633 through 3635. (ii) RCW 63.04.210(4), 63.04.260, 63.04.340, 63.04.390, and 63.04.630; 1925 ex.s. c 142 §§ 20, 25, 33, 38, and 62; RRS §§ 5836-20, 5836-25, 5836-33, 5836-38, and 5836-62. (iii) RCW 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; 1961 c 14 §§ 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; prior: 1915 c 159 §§ 32, 38, 39, 40, and 42; RRS §§ 3678, 3684, 3685, 3686, and 3688; formerly RCW 81.32.410, 81.32.470, 81.32.480, 81.32.490, and 81.32.510.]

62A.7-503 Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (RCW 62A.7-403) or with power of disposition under this Title (RCW 62A.2-403 and RCW 62A.9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver. [1965 ex.s. c 157 § 7-503. Cf. former RCW sections: (i) RCW 22.04.420; 1913 c 99 § 41; RRS § 3627. (ii) RCW 63.04.340; 1925 ex.s. c 142 § 33; RRS § 5836-33. (iii) RCW 81.32.321; 1961 c 14 § 81.32.321; prior: 1915 c 159 § 32; RRS § 3678; formerly RCW 81.32.410.]

62A.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery. (1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under RCW 62A.7-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which

causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under RCW 62A.2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [1965 ex.s. c 157 § 7-504. Cf. former RCW sections: (i) RCW 22.04.420(2) and 22.04.430; 1913 c 99 §§ 41 and 42; RRS §§ 3627, and 3628. (ii) RCW 63.04.350; 1925 ex.s. c 142 § 34; RRS § 5834-34. (iii) RCW 81.32.321(2) and 81.32.331; 1961 c 14 §§ 81.32.321 and 81.32.331; prior: 1915 c 159 §§ 32 and 33; RRS §§ 3678 and 3679; formerly RCW 81.32.410 and 81.32.420.]

62A.7-505 Indorser not a guarantor for other parties. The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. [1965 ex.s. c 157 § 7-505. Cf. former RCW sections: (i) RCW 22.04.460; 1913 c 99 § 45; RRS § 3631. (ii) RCW 63.04.380; 1925 ex.s. c 142 § 37; RRS § 5836-37. (iii) RCW 81.32.361; 1961 c 14 § 81.32.361; prior: 1915 c 159 § 36; RRS § 3682; formerly RCW 81.32.450.]

62A.7-506 Delivery without indorsement: Right to compel indorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. [1965 ex.s. c 157 § 7-506. Cf. former RCW sections: (i) RCW 22.04.440; 1913 c 99 § 43; RRS § 3629. (ii) RCW 63.04.360; 1925 ex.s. c 142 § 35; RRS § 5836-35. (iii) RCW 81.32.341; 1961 c 14 § 81.32.341; prior: 1915 c 159 § 34; RRS § 3680; formerly RCW 81.32.430.]

62A.7-507 Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [1965 ex.s. c 157 § 7-507. Cf. former RCW sections: (i) RCW 22.04.450; 1913 c 99 § 44; RRS § 3630. (ii) RCW 63.04.370; 1925 ex.s. c 142 § 36; RRS § 5836-36. (iii) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440.]

62A.7-508 Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of

documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [1965 ex.s. c 157 § 7-508. Cf. former RCW sections: (i) RCW 22.04.470; 1913 c 99 § 46; RRS § 3632. (ii) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.7-509 Receipt or bill: When adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5). [1965 ex.s. c 157 § 7-509.]

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

62A.7-601 Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. [1965 ex.s. c 157 § 7-601. Cf. former RCW sections: (i) RCW 22.04.150; 1913 c 99 § 14; RRS § 3600. (ii) RCW 81.32.171; 1961 c 14 § 81.32.171; prior: 1915 c 159 § 17; RRS § 3663; formerly RCW 81.32.180.]

62A.7-602 Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. [1965 ex.s. c 157 § 7-602. Cf. former RCW sections: (i) RCW 22.04.260; 1913 c 99 § 25; RRS

§ 3611. (ii) RCW 81.32.241; 1961 c 14 § 81.32.241; prior: 1915 c 159 § 24; RRS § 3670; formerly RCW 81.32.250.]

62A.7-603 Conflicting claims; interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate. [1965 ex.s. c 157 § 7-603. Cf. former RCW sections: (i) RCW 22.04.170 and 22.04.180; 1913 c 99 §§ 16 and 17; RRS §§ 3602 and 3603. (ii) RCW 81.32.201 and 81.32.211; 1961 c 14 §§ 81.32.201 and 81.32.211; prior: 1915 c 159 §§ 20 and 21; RRS §§ 3666 and 3667; formerly RCW 81.32.210 and 81.32.220.]

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PART 1

SHORT TITLE AND GENERAL MATTERS

62A.8-101 Short title. This Article may be cited as Uniform Commercial Code—Investment Securities. [1995 c 48 § 1; 1965 ex.s. c 157 § 8-101.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-102 Definitions. (1) In this Article:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including adoption of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of RCW 62A.8-501(2) (b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in RCW 62A.8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in RCW 62A.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person	RCW 62A.8-107
Control	RCW 62A.8-106
Delivery	RCW 62A.8-301
Investment company security	RCW 62A.8-103
Issuer	RCW 62A.8-201
Overissue	RCW 62A.8-210
Protected purchaser	RCW 62A.8-303
Securities account	RCW 62A.8-501

(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule. [1995 c 48 § 2; 1986 c 35 § 1; 1973 c 98 § 1; 1965 ex.s. c 157 § 8-102. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-103 Rules for determining whether certain obligations and interests are securities or financial assets.

(1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment

company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9-115, is not a security or a financial asset. [1995 c 48 § 3; 1986 c 35 § 2; 1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-104 Acquisition of security or financial asset or interest therein. (1) A person acquires a security or an interest therein, under this Article, if:

(a) The person is a purchaser to whom a security is delivered pursuant to RCW 62A.8-301; or

(b) The person acquires a security entitlement to the security pursuant to RCW 62A.8-501.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this Article, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in RCW 62A.8-503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2) of this section. [1995 c 48 § 4; 1986 c 35 § 3; 1965 ex.s. c 157 § 8-104.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations—Purchase of own shares: RCW 23B.06.030 and 23B.06.310.

62A.8-105 Notice of adverse claim. (1) A person has notice of an adverse claim if:

(a) The person knows of the adverse claim;

(b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) One year after a date set for presentment or surrender for redemption or exchange; or

(b) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under Article 9 is not notice of an adverse claim to a financial asset. [1995 c 48 § 5; 1986 c 35 § 4; 1965 ex.s. c 157 § 8-105. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-106 Control. (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) The uncertificated security is delivered to the purchaser; or

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) The purchaser becomes the entitlement holder; or

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) of this section has control even if the registered owner in the case of subsection (3)(b) of this section or the entitlement holder in the case of subsection (4)(b) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder. [1995 c 48 § 6; 1986 c 35 § 5; 1965 ex.s. c 157 § 8-106.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-107 Whether indorsement, instruction, or entitlement is effective. (1) "Appropriate person" means:

(a) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) With respect to an instruction, the registered owner of an uncertificated security;

(c) With respect to an entitlement order, the entitlement holder;

(d) If the person designated in (a), (b), or (c) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) If the person designated in (a), (b), or (c) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) It is made by the appropriate person;

(b) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under RCW 62A.8-106 (3)(b) or (4)(b); or

(c) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any

law requiring the representative to obtain court approval of the transaction; or

(b) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances. [1995 c 48 § 7; 1986 c 35 § 6; 1965 ex.s. c 157 § 8-107.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-108 Warranties in direct holding. (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(a) The certificate is genuine and has not been materially altered;

(b) The transferor or indorser does not know of any fact that might impair the validity of the security;

(c) There is no adverse claim to the security;

(d) The transfer does not violate any restriction on transfer;

(e) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) The transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) The security is valid;

(c) There is no adverse claim to the security; and

(d) At the time the instruction is presented to the issuer: (i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) The uncertificated security is valid;

(b) There is no adverse claim to the security;

(c) The transfer does not violate any restriction on transfer; and

(d) The transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) There is no adverse claim to the security; and

(b) The indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) The instruction is effective; and

(b) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7) of this section.

(9) Except as otherwise provided in subsection (7) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer. [1995 c 48 § 8; 1986 c 35 § 7.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-109 Warranties in indirect holding. (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) There is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited

to a securities account makes to the securities intermediary the warranties specified in RCW 62A.8-108 (1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in RCW 62A.8-108 (1) or (2). [1995 c 48 § 9.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-110 Applicability; choice of law. (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:

(a) The validity of a security;

(b) The rights and duties of the issuer with respect to registration of transfer;

(c) The effectiveness of registration of transfer by the issuer;

(d) Whether the issuer owes any duties to an adverse claimant to a security; and

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:

(a) Acquisition of a security entitlement from the securities intermediary;

(b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (1) (b) through (e) of this section.

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(b) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in (a) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in (a) or (b) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(d) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in (a) or (b) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in (c) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account. [1995 c 48 § 10.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-111 Clearing corporation rules. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Title and affects another party who does not consent to the rule. [1995 c 48 § 11.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-112 Creditor's legal process. (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4) of this section.

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4) of this section.

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to

property that cannot readily be reached by other legal process. [1995 c 48 § 12.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-113 Statute of frauds inapplicable. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making. [1995 c 48 § 13.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-114 Evidentiary rules concerning certificated securities. The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted. [1995 c 48 § 14.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-115 Securities intermediary and others not liable to adverse claimant. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim. [1995 c 48 § 15.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-116 Securities intermediary as purchaser for value. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitle-

ment for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder. [1995 c 48 § 16.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 2 ISSUE AND ISSUER

62A.8-201 Issuer. (1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(a) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) Becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to registration of a transfer, issuer means a person on whose behalf transfer books are maintained. [1995 c 48 § 17; 1986 c 35 § 8; 1965 ex.s. c 157 § 8-201. Cf. former RCW sections: RCW 62.01.029, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.029, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 29, and 60 through 62; RRS §§ 3420, and 3451 through 3453.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations, effect of merger or consolidation: RCW 23B.11.060.

Securities Act, issuer: RCW 21.20.005(7).

62A.8-202 Issuer's responsibility and defenses; notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even

though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) of this section applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in RCW 62A.8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly. [1995 c 48 § 18; 1986 c 35 § 9; 1965 ex.s. c 157 § 8-202. Cf. former RCW sections: RCW 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 16, 23, 28, 56, 57, and 60 through 62; RRS §§ 3407, 3414, 3419, 3447, 3448, and 3451 through 3453.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-203 Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by subsection (1) of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on

which performance became due. [1995 c 48 § 19; 1986 c 35 § 10; 1965 ex.s. c 157 § 8-203. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-204 Effect of issuer's restrictions on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified by the restriction. [1995 c 48 § 20; 1986 c 35 § 11; 1965 ex.s. c 157 § 8-204. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.160.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations—Stock certificates—Limitations: RCW 23B.06.250.

62A.8-205 Effect of unauthorized signature on security certificate. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in subsection (1) of this section, entrusted with responsible handling of the security certificate. [1995 c 48 § 21; 1986 c 35 § 12; 1965 ex.s. c 157 § 8-205. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-206 Completion or alteration of security certificate. (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms. [1995 c 48 § 22; 1986 c 35 § 13; 1965 ex.s. c 157 § 8-206. Cf. former RCW sections: (i) RCW 23.80.160; 1939 c 100 § 16; RRS § 3803-116; formerly RCW 23.20.170. (ii) RCW 62.01.014, 62.01.015, and 62.01.124; 1955 c 35 §§ 62.01.014, 62.01.015, and 62.01.124; prior: 1899 c 149 §§ 14, 15, and 124; RRS §§ 3405, 3406, and 3514.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-207 Rights and duties of issuer with respect to registered owners. (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like. [1995 c 48 § 23; 1986 c 35 § 14; 1965 ex.s. c 157 § 8-207. Cf. former RCW 23.80.020 and 23.80.030; 1939 c 100 §§ 2 and 3; RRS §§ 3803-102 and 3803-103; formerly RCW 23.20.030 and 23.20.040.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-208 Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) The certificate is genuine;

(b) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) of this section does not assume responsibility for the validity of the security in other respects. [1995 c 48 § 24; 1986 c 35 § 15; 1965 ex.s. c 157 § 8-208.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-209 Issuer's lien. A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate. [1995 c 48 § 25.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-210 Overissue. (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand. [1995 c 48 § 26.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 3
TRANSFER OF CERTIFICATED AND
UNCERTIFICATED SECURITIES

62A.8-301 Delivery. (1) Delivery of a certificated security to a purchaser occurs when:

(a) The purchaser acquires possession of the security certificate;

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser. [1995 c 48 § 27; 1986 c 35 § 16; 1965 ex.s. c 157 § 8-301. Cf. former RCW sections: (i) RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443. (iii) RCW 62.01.057 through 62.01.059; 1955 c 35 §§ 62.01.057 through 62.01.059; prior: 1899 c 149 §§ 57 through 59; RRS §§ 3448 through 3450.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-302 Rights of purchaser. (1) Except as otherwise provided in subsections (2) and (3) of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser. [1995 c 48 § 28; 1986 c 35 § 17; 1965 ex.s. c 157 § 8-302. Cf. former RCW sections: (i) RCW 23.80.230(2); 1939 c 100 § 23; RRS § 3803-123. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-303 Protected purchaser. (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(a) Gives value;

(b) Does not have notice of any adverse claim to the security; and

(c) Obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim. [1995 c 48 § 29; 1986 c 35 § 18; 1965 ex.s. c 157 § 8-303.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-304 Indorsement. (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 30; 1986 c 35 § 19; 1965 ex.s. c 157 § 8-304. Cf. former RCW sections: RCW 62.01.037 and 62.01.056; 1955 c 35 §§ 62.01.037 and 62.01.056; prior: 1899 c 149 §§ 37 and 56; RRS §§ 3428 and 3447.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-305 Instruction. (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 31; 1986 c 35 § 20; 1965 ex.s. c 157 § 8-305. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-306 Effect of guaranteeing signature, indorsement, or instruction. (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(a) The signature was genuine;
 (b) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(c) The signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(a) The signature was genuine;

(b) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(c) The signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) of this section and also warrants that at the time the instruction is presented to the issuer:

(a) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(b) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) of this section or a special guarantor under subsection (3) of this section does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) of this section and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) of this section and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor. [1995 c 48 § 32; 1986 c 35 § 21; 1965 ex.s. c 157 § 8-306. Cf. former RCW sections: (i) RCW 23.80.110 and 23.80.120; 1939 c 100 §§ 11 and 12; RRS §§ 3803-111 and 3803-112; formerly RCW 23.20.120 and 23.20.130. (ii) RCW 62.01.065 through 62.01.067, and 62.01.069; 1955 c 35 §§ 62.01.065 through 62.01.067, and 62.01.069; prior: 1899 c 149 §§ 65 through 67, and 69; RRS §§ 3456 through 3458, and 3460.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-307 Purchaser's right to requisites for registration of transfer. Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer. [1995 c 48 § 33; 1986 c 35 § 22; 1965 ex.s. c 157 § 8-307. Cf. former RCW sections: (i) RCW 23.80.090; 1939 c 100 § 9; RRS § 3803-109; formerly RCW 23.20.100. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 4 REGISTRATION

62A.8-401 Duty of issuer to register transfer. (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (RCW 62A.8-402);

(d) Any applicable law relating to the collection of taxes has been complied with;

(e) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with RCW 62A.8-204;

(f) A demand that the issuer not register transfer has not become effective under RCW 62A.8-403, or the issuer has complied with RCW 62A.8-403(2) but no legal process or indemnity bond is obtained as provided in RCW 62A.8-403(4); and

(g) The transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer. [1995 c 48 § 34; 1986 c 35 § 37; 1965 ex.s. c 157 § 8-401.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-402 Assurance that indorsement or instruction is effective. (1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) If the indorsement is made or the instruction is originated by a fiduciary pursuant to RCW 62A.8-107(1) (d) or (e), appropriate evidence of appointment or incumbency;

(d) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" [means]:

(i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(ii) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate. [1995 c 48 § 35; 1986 c 35 § 38; 1965 ex.s. c 157 § 8-402.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-403 Demand that issuer not register transfer.

(1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (a) the person who initiated the demand at the address provided in the demand and (b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(i) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(ii) A demand that the issuer not register transfer had previously been received; and

(iii) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) of this section may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective. [1995 c 48 § 36; 1986 c 35 § 39; 1965 ex.s. c 157 § 8-403.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-404 Wrongful registration. (1) Except as otherwise provided in RCW 62A.8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) Pursuant to an ineffective indorsement or instruction;

(b) After a demand that the issuer not register transfer became effective under RCW 62A.8-403(1) and the issuer did not comply with RCW 62A.8-403(2);

(c) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) By an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by RCW 62A.8-210.

(3) Except as otherwise provided in subsection (1) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction. [1995 c 48 § 37; 1986 c 35 § 40; 1965 ex.s. c 157 § 8-404.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-405 Replacement of lost, destroyed, or wrongfully taken security certificate. (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by RCW 62A.8-209. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from the person to whom it was issued or any person taking under that person, except a protected purchaser. [1995 c 48 § 38; 1986 c 35 § 41; 1965 ex.s. c 157 § 8-405. Cf. former RCW 23.80.170; 1939 c 100 § 17; RRS § 3803-117; formerly RCW 23.20.180.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under RCW 62A.8-404 or a claim to a new security certificate under RCW 62A.8-405. [1995 c 48 § 39; 1986 c 35 § 42; 1965 ex.s. c 157 § 8-406.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-407 Authenticating trustee, transfer agent, and registrar. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions. [1995 c 48 § 40; 1986 c 35 § 43.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 5 SECURITY ENTITLEMENTS

62A.8-501 Securities account; acquisition of security entitlement from securities intermediary. (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5) of this section, a person acquires a security entitlement if a securities intermediary:

(a) Indicates by book entry that a financial asset has been credited to the person's securities account;

(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement. [1995 c 48 § 41.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-502 Assertion of adverse claim against entitlement holder. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under RCW 62A.8-501 for value and without notice of the adverse claim. [1995 c 48 § 42.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-503 Property interest of entitlement holder in financial asset held by securities intermediary. (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in RCW 62A.8-511.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under RCW 62A.8-505 through 62A.8-508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(a) Insolvency proceedings have been initiated by or against the securities intermediary;

(b) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) The securities intermediary violated its obligations under RCW 62A.8-504 by transferring the financial asset or interest therein to the purchaser; and

(d) The purchaser is not protected under subsection (5) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under RCW 62A.8-504. [1995 c 48 § 43.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-504 Duty of securities intermediary to maintain financial asset. (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1) of this section.

(3) A securities intermediary satisfies the duty in subsection (1) of this section if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements. [1995 c 48 § 44.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-505 Duty of securities intermediary with respect to payments and distributions. (1) A securities intermediary shall take action to obtain a payment or dis-

tribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary. [1995 c 48 § 45.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-506 Duty of securities intermediary to exercise rights as directed by entitlement holder. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 46.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-507 Duty of securities intermediary to comply with entitlement order. (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages. [1995 c 48 § 47.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-508 Duty of securities intermediary to change entitlement holder's position to other form of security holding. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement

holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 48.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-509 Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder. (1) If the substance of a duty imposed upon a securities intermediary by RCW 62A.8-504 through 62A.8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by RCW 62A.8-504 through 62A.8-508 is subject to:

(a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) RCW 62A.8-504 through 62A.8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule. [1995 c 48 § 49.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-510 Rights of purchaser of security entitlement from entitlement holder. (1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under RCW 62A.8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein,

who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary. [1995 c 48 § 50.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-511 Priority among security interests and entitlement holders. (1) Except as otherwise provided in subsections (2) and (3) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders. [1995 c 48 § 51.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 6
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REVISED ARTICLE 8 AND CONFORMING
AMENDMENTS TO *ARTICLES 1, 5, 9, AND 10

*Reviser's note: See 1995 c 48 §§ 54 through 71.

62A.8-601 Savings clause. (1) Chapter 48, Laws of 1995 does not affect an action or proceeding commenced before April 17, 1995.

(2) If a security interest in a security is perfected by April 17, 1995, and the action by which the security interest was perfected would suffice to perfect a security interest under chapter 48, Laws of 1995, no further action is required to continue perfection. If a security interest in a security is perfected by April 17, 1995, but the action by which the security interest was perfected would not suffice to perfect a security interest under chapter 48, Laws of 1995, the security interest remains perfected through December 31, 1995, and continues perfected thereafter if appropriate action to perfect under chapter 48, Laws of 1995 is taken by that date. If a security interest is perfected by April 17, 1995, and the security interest can be perfected by filing under chapter 48, Laws of 1995, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect. [1995 c 48 § 53.]

Effective date—1995 c 48: See RCW 62A.11-113.

Article 9

**SECURED TRANSACTIONS;
SALES OF ACCOUNTS, CONTRACT RIGHTS
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Reviser's note: Powers, duties, and functions of the department of licensing relating to investments and securities were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

PART 1

SHORT TITLE, APPLICABILITY AND DEFINITIONS

62A.9-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Secured Transactions. [1965 ex.s. c 157 § 9-101.]

62A.9-102 Policy and subject matter of Article. (1) Except as otherwise provided in RCW 62A.9-104 on excluded transactions, this Article applies

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) to any sale of accounts or chattel paper.
(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in RCW 62A.9-310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply. [1981 c 41 § 6; 1965 ex.s. c 157 § 9-102. Cf. former RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-103 Perfection of security interest in multiple state transactions. (1) Documents, instruments, letters of credit, and ordinary goods.

(a) This subsection applies to documents, instruments, rights to proceed of written letters of credit, and goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of RCW 62A.9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(e) For purposes of this subsection, rights to proceeds of a written letter of credit are deemed located where the letter of credit is located.

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in

another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the

expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in RCW 62A.8-110(4).

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in RCW 62A.8-110(5).

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) if an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) if an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is

located the office identified in an account statement as the office serving the commodity customer's account.

(iv) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located. [1997 c 56 § 21; 1995 c 48 § 58; 1986 c 35 § 45; 1981 c 41 § 7; 1965 ex.s. c 157 § 9-103.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-104 Transactions excluded from Article. This Article does not apply

(a) to a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials or to a lien created under chapter 60.13 or 22.09 RCW except as provided in RCW 62A.9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to a transfer by a government or governmental subdivision or agency; or

(f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (RCW 62A.9-306) and priorities in proceeds (RCW 62A.9-312); or

(h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in RCW 62A.9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any claim arising out of tort; or

(l) to a transfer of an interest in any deposit account (subsection (1) of RCW 62A.9-105), except as provided with respect to proceeds (RCW 62A.9-306) and priorities in proceeds (RCW 62A.9-312); or

(m) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit. [1997 c 56 § 22; 1985 c 412 § 11; 1983 c 305 § 75; 1981 c 41 § 8; 1965 ex.s. c 157 § 9-104. Cf. former RCW sections: (i) RCW 61.20.010 and 61.20.140; 1943 c 71 §§ 1 and 14; Rem. Supp. 1943 §§ 11548-30 and 11548-43. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 63.16.010 and 63.16.110(2); 1947 c 8 §§ 1 and 11; Rem. Supp. 1947 §§ 2721-1 and 2721-11.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Severability—1983 c 305: See note following RCW 20.01.010.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-105 Definitions and index of definitions. (1)

In this Article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of Article 1 (RCW 62A.1-201), and a receipt of the kind described in subsection (2) of RCW 62A.7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (RCW 62A.9-313), but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed

under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in RCW 62A.3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account".	RCW 62A.9-106.
"Attach"	RCW 62A.9-203.
"Commodity contract".	RCW 62A.9-115.
"Commodity customer".	RCW 62A.9-115.
"Commodity intermediary".	RCW 62A.9-115.
"Construction mortgage"	RCW 62A.9-313(1).
"Consumer goods".	RCW 62A.9-109(1).
"Control".	RCW 62A.9-115.
"Equipment".	RCW 62A.9-109(2).
"Farm products".	RCW 62A.9-109(3).
"Fixture".	RCW 62A.9-313.
"Fixture filing".	RCW 62A.9-313.
"General intangibles".	RCW 62A.9-106.
"Inventory".	RCW 62A.9-109(4).
"Investment property"	RCW 62A.9-115.
"Lien creditor".	RCW 62A.9-301(3).
"Proceeds".	RCW 62A.9-306(1).
"Purchase money security interest".	RCW 62A.9-107.
"United States"	RCW 62A.9-103.

(3) The following definitions in other Articles apply to this Article:

"Broker".	RCW 62A.8-102.
"Certificated security".	RCW 62A.8-102.
"Check".	RCW 62A.3-104.
"Clearing corporation"	RCW 62A.8-102.
"Contract for sale"	RCW 62A.2-106.
"Control".	RCW 62A.8-106.
"Delivery".	RCW 62A.8-301.

"Entitlement holder".	RCW 62A.8-102.
"Financial asset".	RCW 62A.8-102.
"Holder in due course".	RCW 62A.3-302.
"Letter of credit".	RCW 62A.5-102.
"Note"	RCW 62A.3-104.
"Proceeds of a letter of credit".	RCW 62A.5-114(1).
"Sale".	RCW 62A.2-106.
"Securities intermediary".	RCW 62A.8-102.
"Security".	RCW 62A.8-102.
"Security certificate".	RCW 62A.8-102.
"Security entitlement".	RCW 62A.8-102.
"Uncertificated security".	RCW 62A.8-102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1997 c 56 § 23; 1995 c 48 § 59; 1986 c 35 § 46; 1981 c 41 § 9; 1965 ex.s. c 157 § 9-105. Cf. former RCW sections: (i) RCW 61.20.010; 1943 c 71 § 1; Rem. Supp. 1943 § 11548-30. (ii) RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-106 Definitions: "Account"; "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. [1997 c 56 § 24; 1995 c 48 § 60; 1981 c 41 § 10; 1965 ex.s. c 157 § 9-106. Cf. former RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-107 Definitions: "Purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. [1965 ex.s. c 157 § 9-107.]

62A.9-108 When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his

security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. [1965 ex.s. c 157 § 9-108.]

62A.9-109 Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory". Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. [1965 ex.s. c 157 § 9-109.]

62A.9-110 Sufficiency of description. For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. [1965 ex.s. c 157 § 9-110. Cf. former RCW sections: (i) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (ii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790.]

62A.9-112 Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under RCW 62A.9-502(2) or under RCW 62A.9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

(a) to receive statements under RCW 62A.9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under RCW 62A.9-505;

(c) to redeem the collateral under RCW 62A.9-506;

(d) to obtain injunctive or other relief under RCW 62A.9-507(1); and

(e) to recover losses caused to him under RCW 62A.9-208(2). [1965 ex.s. c 157 § 9-112.]

62A.9-113 Security interests arising under Article on sales or leases. A security interest arising solely under the Article on Sales (Article 2) or the Article on Leases (Article 2A) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed (i) by the Article on Sales (Article 2) in the case of a security interest arising solely under such Article or (ii) by the Article on Leases (Article 2A) in the case of a security interest arising solely under such Article. [1993 c 230 § 2A-603; 1965 ex.s. c 157 § 9-113.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.9-114 Consignment. (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this Article by paragraph (3)(c) of RCW 62A.2-326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

(a) the consignor complies with the filing provision of the Article on Sales with respect to consignments (paragraph (3)(c) of RCW 62A.2-326) before the consignee receives possession of the goods; and

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(c) the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor. [1981 c 41 § 11.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-115 Investment property. (1) In this Article:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) "Commodity intermediary" means:

(i) a person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) a person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in RCW 62A.8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) "Investment property" means:

(i) a security, whether certificated or uncertificated;

(ii) a security entitlement;

(iii) a securities account;

(iv) a commodity contract; or

(v) a commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by RCW 62A.9-312 (5), (6), and (7). RCW 62A.9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking. [1995 c 48 § 61.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.9-116 Security interest arising in purchase or delivery of financial asset. (1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not

required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected. [1995 c 48 § 62.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

PART 2

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

62A.9-201 General validity of security agreement.

Except as otherwise provided by this Title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. [1965 ex.s. c 157 § 9-201. Cf. former RCW sections: (i) RCW 61.20.030 and 61.20.050; 1943 c 71 §§ 3 and 5; Rem. Supp. 1943 §§ 11548-32 and 11548-34. (ii) RCW 63.16.110(1); 1947 c 8 § 11; Rem. Supp. 1947 § 2721-11.]

Consumer loan act: Chapter 31.04 RCW.

Crop credit associations—Loans and security: RCW 31.16.130.

Interest—Usury: Chapter 19.52 RCW.

62A.9-202 Title to collateral immaterial. Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. [1965 ex.s. c 157 § 9-202. Cf. former RCW 61.20.010; 1943 c 71 § 1; Rem. Supp. 1943 § 11548-30.]

62A.9-203 Attachment and enforceability of security interest; proceeds; formal requisites. (1) Subject to the provisions of RCW 62A.4-210 on the security interest of a collecting bank, RCW 62A.9-115 and 62A.9-116 on security interests in investment property, and RCW 62A.9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be

grown or timber to be cut, a description of the land concerned;

- (b) value has been given; and
- (c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by RCW 62A.9-306.

(4) A transaction, although subject to this Article, is also subject to chapters 31.04, 31.12, 31.16, 31.20, and 31.24 RCW, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. [1996 c 77 § 4; 1995 c 48 § 63; 1986 c 35 § 47; 1985 c 412 § 12; 1982 c 186 § 1; 1981 c 41 § 12; 1965 ex.s. c 157 § 9-203. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040; 1943 c 71 § 4; Rem. Supp. 1943 § 11548-33. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1982 c 186: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect midnight June 30, 1982." [1982 c 186 § 12.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-204 After-acquired property; future advances; livestock or meat products. (1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (RCW 62A.9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (subsection (1) of RCW 62A.9-105).

(4) A security interest cannot attach to livestock or to meat or meat products made from such livestock, where: (a) The livestock was sold to the commission merchant or dealer in livestock as defined in chapter 20.01 RCW or to a commercial feedlot by another party, (b) this other party has been paid by draft or check, and (c) the draft or check remains outstanding: PROVIDED, That a security interest may attach when the draft or check has been outstanding more than ten days. [1986 c 178 § 16; 1981 c 41 § 13; 1974 ex.s. c 102 § 1; 1965 ex.s. c 157 § 9-204. Cf. former

RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040 and 61.20.140; 1943 c 71 §§ 4 and 14; Rem. Supp. 1943 §§ 11548-33 and 11548-43.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-205 Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. [1981 c 41 § 14; 1965 ex.s. c 157 § 9-205. Cf. former RCW sections: (i) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (ii) RCW 63.16.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists. (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Negotiable Instruments (Article 3).

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. [1996 c 77 § 5; 1965 ex.s. c 157 § 9-206.]

62A.9-207 Rights and duties when collateral is in secured party's possession. (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral (a) for the purpose of preserving the collateral or its value or (b) pursuant to the order of a court of appropriate jurisdiction or, (c) except in the case of consumer goods, in the manner and to the extent provided in the security agreement. [1965 ex.s. c 157 § 9-207.]

62A.9-208 Request for statement of account or list of collateral. (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor, or any other person whom he designates in writing to the secured party. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor or such other person as the debtor has designated as the recipient of such information thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor or designated recipient of the information as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding ten dollars for each additional statement furnished. [1965 ex.s. c 157 § 9-208. Cf. former RCW 63.16.100; 1947 c 8 § 10; Rem. Supp. 1947 § 2721-10.]

PART 3
RIGHTS OF THIRD PARTIES;
PERFECTED AND UNPERFECTED SECURITY
INTERESTS; RULES OF PRIORITY

Mortgaged, pledged or assigned rents and profits of realty excluded from Article 62A.9 RCW: RCW 7.28.230.

62A.9-301 Persons who take priority over unperfected security interests; rights of "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under RCW 62A.9-312;
(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within twenty days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. [1995 c 48 § 64; 1982 c 186 § 2; 1981 c 41 § 15; 1965 ex.s. c 157 § 9-301. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (iii) RCW 61.20.010 and 61.20.090(2); 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iv) RCW 61.20.080(1), (2), (3); 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (v) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (vi) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-302 When filing is required to perfect security interest; security interests to which filing provisions of this Article do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under RCW 62A.9-305;

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under RCW 62A.9-304 or in proceeds for a ten day period under RCW 62A.9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and other property subject to subsection (3) of this section; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in RCW 62A.9-313;

(e) a security interest of a collecting bank (RCW 62A.4-210) or arising under the Articles on Sales and Leases (RCW 62A.9-113) or covered in subsection (3) of this section;

(f) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(g) a security interest in investment property which is perfected without filing under RCW 62A.9-115 or 62A.9-116.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or

(b) the following statute of this state: RCW 46.12.095 or 88.02.070; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of RCW 62A.9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in RCW 62A.9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

(5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage with the department of licensing. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed with the department of licensing. The director of licensing shall be a filing officer for the foregoing purposes. [1996 c 77 § 6; 1995 c 48 § 65. Prior: 1987 c 189 § 1; 1986 c 35 § 48; 1985 c 258 § 3; 1981 c 41 § 16; 1979 c 158 § 210; 1977 ex.s. c 117 § 6; 1967 c 114 § 4; 1965 ex.s. c 157 § 9-302. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.030 and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (iii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1985 c 258: See note following RCW 88.02.070.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Motor vehicles—Certificate of ownership and registration: RCW 46.12.010.

Seed bailment contracts: Filing, recording or notice of contract not required to establish validity of contract or title in bailor: RCW 15.48.270 through 15.48.290.

62A.9-303 When security interest is perfected; continuity of perfection. (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in RCW 62A.9-302, RCW 62A.9-304, RCW 62A.9-305 and RCW 62A.9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article. [1965 ex.s. c 157 § 9-303.]

62A.9-304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to

proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of RCW 62A.9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to subsection (3) of RCW 62A.9-312; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article. [1997 c 56 § 25; 1995 c 48 § 66; 1986 c 35 § 49; 1981 c 41 § 17; 1965 ex.s. c 157 § 9-304. Cf. former RCW sections: (i) RCW 61.20.030 and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (ii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iii) RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-305 When possession by secured party perfects security interest without filing. A security interest in goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by

the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party. [1997 c 56 § 26; 1995 c 48 § 67; 1986 c 35 § 50; 1981 c 41 § 18; 1965 ex.s. c 157 § 9-305.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-306 "Proceeds"; secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds or instruments;

(c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security

interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under RCW 62A.9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. [1995 c 48 § 68; 1981 c 41 § 19; 1965 ex.s. c 157 § 9-306. Cf. former RCW sections: (i) RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9 and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39. (ii) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (iii) RCW 63.16.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-307 Protection of buyers of goods. (1) A buyer in ordinary course of business (subsection (9) of RCW

62A.1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, unless made pursuant to a commitment entered into without knowledge of the purchase. [1987 c 393 § 15; 1985 c 412 § 13; 1981 c 41 § 20; 1965 ex.s. c 157 § 9-307. Cf. former RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-308 Purchase of chattel paper and instruments. A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

(a) which is perfected under RCW 62A.9-304 (permissive filing and temporary perfection) or under RCW 62A.9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) which is claimed merely as proceeds of inventory subject to a security interest (RCW 62A.9-306) even though he knows that the specific paper or instrument is subject to the security interest. [1981 c 41 § 21; 1965 ex.s. c 157 § 9-308. Cf. former RCW sections: RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9 and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-309 Protection of purchasers of instruments, documents, and securities. Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (RCW 62A.3-302) or a holder to whom a negotiable document of title has been duly negotiated (RCW 62A.7-501) or a protected purchaser of a security (RCW 62A.8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers. [1995 c 48 § 69; 1986 c 35 § 51; 1965 ex.s. c 157 § 9-309. Cf. former RCW 61.20.090(1); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.9-310 Priority of certain liens arising by operation of law. (1) When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law

for such materials or services takes priority over a perfected security interest only if the lien is statutory and the statute expressly provides for such priority.

(2) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest.

(3) Conflicting priorities between crop liens created under chapter 60.11 RCW and security interests shall be governed by chapter 60.11 RCW. [1991 c 286 § 7; 1986 c 242 § 16; 1985 c 412 § 10; 1983 c 305 § 76; 1965 ex.s. c 157 § 9-310. Cf. former RCW 61.20.110; 1943 c 71 § 11; Rem. Supp. 1943 § 11548-40.]

Severability—Effective date—1986 c 242: See RCW 60.11.902 and 60.11.903.

Severability—1983 c 305: See note following RCW 20.01.010.

62A.9-311 Alienability of debtor's rights: Judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. [1965 ex.s. c 157 § 9-311. Cf. former RCW 61.08.120; Code 1881 § 1990; 1879 p 105 § 5; RRS § 1115.]

62A.9-312 Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: RCW 62A.4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-103 on security interests related to other jurisdictions; RCW 62A.9-114 on consignments; RCW 62A.9-115 on security interests in investment property.

(2) Conflicting priorities between security interests in crops shall be governed by chapter 60.11 RCW.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of RCW 62A.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under RCW 62A.9-115 or 62A.9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made. [1996 c 77 § 7; 1995 c 48 § 70; 1989 c 251 § 1; 1986 c 35 § 52; 1982 c 186 § 3; 1981 c 41 § 22; 1965 ex.s. c 157 § 9-312. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.010 and 61.20.090; 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (iv) RCW 63.16.030 and 63.16.090; 1947 c 8 §§ 3 and 9; Rem. Supp. 1947 §§ 2721-3 and 2721-9.]

Effective date—1995 c 48: See RCW 62A.11-113.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-313 Priority of security interests in fixtures.

(1) In this section and in the provisions of Part 4 of this Article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to

become fixtures and conforming to the requirements of subsection (5) of RCW 62A.9-402;

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this Article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Article in ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default,

subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1982 c 186 § 4; 1981 c 41 § 23; 1965 ex.s. c 157 § 9-313. Cf. former RCW sections: (i) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (ii) RCW 63.12.020; 1933 c 129 § 2; 1903 c 6 § 2; 1893 c 106 § 2; RRS § 3791.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-314 Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to RCW 62A.9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1965 ex.s. c 157 § 9-314.]

62A.9-315 Priority when goods are commingled or processed. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under RCW 62A.9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. [1965 ex.s. c 157 § 9-315.]

62A.9-316 Priority subject to subordination. Nothing in this Article prevents subordination by agreement by any person entitled to priority. [1965 ex.s. c 157 § 9-316.]

62A.9-317 Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. [1965 ex.s. c 157 § 9-317. Cf. former RCW 61.20.120; 1943 c 71 § 12; Rem. Supp. 1943 § 11548-41.]

62A.9-318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in RCW 62A.9-206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not

reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest. [1981 c 41 § 24; 1965 ex.s. c 157 § 9-318. Cf. former RCW sections: (i) RCW 61.20.090(3); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

Effective date—1981 c 41: See RCW 62A.11-101.

Actions on assigned choses in action: RCW 4.08.080.

PART 4 FILING

Filing of security interests created by deed of trust or mortgage made by corporation engaged in railroad or utility business or services: RCW 62A.9-302(5).

Seed bailment contracts

application of Article 62A.9 RCW to: RCW 15.48.270 through 15.48.290.
security interest not created by contract: RCW 15.48.280.

62A.9-401 Place of filing; erroneous filing; removal of collateral. (1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or when the financing statement is filed as a fixture filing (RCW 62A.9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(b) in all other cases, in the office of the department of licensing.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in RCW 62A.9-103 determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections, and subject to subsection (3) of RCW 62A.9-302, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is with the department of licensing. This filing constitutes a fixture filing (RCW 62A.9-313) as to the collateral described therein which is or is to become fixtures.

(6) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

[1981 c 41 § 25; 1979 c 158 § 211; 1977 ex.s. c 117 § 7; 1965 ex.s. c 157 § 9-401. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.030; 1943 c 71 § 3; Rem. Supp. 1943 § 11548-32. (iii) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.010(6); 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

62A.9-402 Formal requisites of financing statement; amendments; mortgage as financing statement. (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or when the financing statement is filed as a fixture filing (RCW 62A.9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(b) proceeds under RCW 62A.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)
Address
Name of secured party (or assignee)
Address

- 1. This financing statement covers the following types (or items) of property:
(Describe)
- 2. (If applicable) The above goods are to become fixtures on*
(Describe Real Estate)
and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is
*Where appropriate substitute either "The above timber is standing on" or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on"
- 3. (If products of collateral are claimed)
Products of the collateral are also covered
(use
whichever Signature of Debtor (or Assignor)
is
applicable) Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party: PROVIDED, That a secured party may amend a financing statement without the signature of the debtor when the amendment is to change the address or name of the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments. The fee for filing an amendment shall be the same as the fee for filing a financing statement.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or a financing statement filed as a fixture filing (RCW 62A.9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement or an amendment is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. [1989 c 251 § 2; 1982 c 186 § 5; 1981 c 41 § 26; 1965 ex.s. c 157 § 9-402. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (iii) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

(2) Except as provided in subsection (6) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of RCW 62A.9-405, including

payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. The filing officer may remove the original of any statement from the files and destroy it at any time if he has substituted a copy by microfilm or other photographic record. The filing officer may destroy any original, microfilm, or photographic record of any lapsed statement not earlier than one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the original of the financing statements, a microfilm or other photographic copy of those statements which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7) a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. The original statement may be destroyed at any time after a microfilm or other photographic copy is made of the original statement. This microfilm or other photographic copy shall thereafter be treated as if it were the original filing for all purposes. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The secured party may at his option show a trade name for any person.

(6) If the debtor is a transmitting utility (subsection (5) of RCW 62A.9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection (6) of RCW 62A.9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described. [1987 c 189 § 2; 1982 c 186 § 6; 1981 c 41 § 27; 1979 c 158 § 212; 1977 ex.s. c 117 § 8; 1967 c 114 § 5; 1965 ex.s. c 157 § 9-403. Cf. former RCW sections: (i) RCW 61.04.030; 1959 c 263 § 11; 1953 c 214 § 3; 1943 c 284 § 2; 1899 c 98 § 2; Rem. Supp. 1943 § 3781. (ii) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (iii) RCW

61.04.050; 1899 c 98 § 4; RRS § 3783. (iv) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (v) RCW 63.12.020; 1933 c 129 § 2; 1903 c 6 § 2; 1893 c 106 § 2; RRS § 3791. (vi) RCW 63.16.040 through 63.16.060; 1947 c 8 §§ 4 through 6; Rem. Supp. 1947 §§ 2721-4 through 2721-6.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-404 Termination statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2) of RCW 62A.9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has substituted a copy by microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may destroy the originals at any time, and shall retain the substituted microfilm or other photographic record for one year after receipt of the termination statement.

(3) There shall be no fee for filing and indexing a termination statement including sending or delivering the financing statement. [1982 c 186 § 7; 1981 c 41 § 28; 1979 c 158 § 213; 1977 ex.s. c 117 § 9; 1967 c 114 § 6; 1965 ex.s. c 157 § 9-404. Cf. former RCW sections: (i) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787. (ii) RCW 61.16.050; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 9); RRS § 3787-1. (iii) RCW 61.16.070; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 11); RRS § 3787-3. (iv) RCW 63.16.070; 1947 c 8 § 7; Rem. Supp. 1947 § 2721-7.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-405 Assignment of security interest; duties of filing officer. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement, the filing officer shall mark, hold, and process the same as provided in RCW 62A.9-403(4).

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark, hold, and process the statement the same as provided in RCW 62A.9-403(4). He shall note the assignment on the index of the financing statement or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of RCW 62A.9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this Title.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. [1987 c 189 § 3; 1982 c 186 § 8; 1981 c 41 § 29; 1979 c 158 § 214; 1977 ex.s. c 117 § 10; 1967 c 114 § 7; 1965 ex.s. c 157 § 9-405. Cf. former RCW sections: (i) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787. (ii) RCW 61.16.050; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 9); RRS § 3787-1.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-406 Release of collateral; duties of filing officer. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be

accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of RCW 62A.9-405, including payment of the required fee. Upon presentation of such a statement of release, the filing officer shall mark, hold, and process the statement the same as provided in RCW 62A.9-403(4). [1987 c 189 § 4; 1982 c 186 § 9; 1981 c 41 § 30; 1979 c 158 § 215; 1977 ex.s. c 117 § 11; 1967 c 114 § 9; 1965 ex.s. c 157 § 9-406. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-407 Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person following payment of the required fees, the department of licensing shall issue its certificate showing whether there is on file with the department of licensing on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. Upon request and following payment of the required fees, the department of licensing shall issue its certificate and shall furnish a copy of any filed financing statements or statements of assignment. [1987 c 189 § 5; 1982 c 186 § 10; 1981 c 41 § 31; 1967 c 114 § 10; 1965 ex.s. c 157 § 9-407.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Duty of secretary of state to furnish copies of filed, deposited or recorded instruments: RCW 43.07.030.

62A.9-408 Financing statements covering consigned or leased goods. A consignor or lessor of goods may file a financing statement using the terms specified in RCW 62A.9-402 or the terms "consignor," "consignee," "lessor," "lessee" or the like. The provisions of this Part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (RCW 62A.1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing. [1981 c 41 § 32.]

Recodification—1981 c 41: "Section 11, chapter 114, Laws of 1967 which was codified pursuant to legislative direction as RCW 62A.9-408 shall be recodified as RCW 62A.9-420.

It is the intent of the legislature by recodifying this section to preserve the uniformity of the Uniform Commercial Code." [1981 c 41 § 33.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-409 Standard filing forms, fees, and uniform procedures; acceptance for filing of financial statements on and after June 12, 1967; laws governing; fees. In relation to Article 62A.9 RCW:

(1) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers. The director shall set fees at a sufficient level to defray the costs of administering the program. All receipts from fees collected under this title, except fees for services covered under RCW 62A.9-401(1)(a), shall be deposited, beginning July 1, 1993, to the uniform commercial code fund, hereby created in the state treasury. Moneys in the fund may be spent only after appropriation and may be used only to administer the uniform commercial code program.

(2) Unless a filing officer has filed with the secretary of state on or before June 1, 1967, his or her certificate that financing statements, as defined in RCW 62A.9-402, will not be accepted by him or her for filing on and after June 12, 1967, such filing officer shall accept such financing statements for filing on and after June 12, 1967. Financing statements so filed shall be received, marked, indexed, and filed as provided in Title 62A RCW. The filing fees for filing such statements shall be as provided in Title 62A RCW. [1993 c 51 § 1; 1987 c 189 § 6; 1979 c 158 § 216; 1977 ex.s. c 117 § 12; 1967 c 114 § 12.]

Effective date—1993 c 51: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 51 § 2.]

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

62A.9-420 Presigning of security agreements and financing statements; prefilling of financing statements.

(1) Although signed prior to midnight June 30, 1967, a security agreement and a financing statement has the same effect as if signed after said time.

(2) The provisions of this Title and of all other laws relating to financing statements and the filing of financing statements apply to financing statements filed prior to midnight June 30, 1967, notwithstanding that this Title had not yet taken effect. Notwithstanding the date and hour of filing marked on the statement, each financing statement so prefilled is deemed to have been filed on the date and hour when this Title became effective. [1967 c 114 § 11. Formerly RCW 62A.9-408.]

Reviser's note: Pursuant to legislative direction section 11, chapter 114, Laws of 1967 was recodified as RCW 62A.9-420. See note following RCW 62A.9-408.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

PART 5
DEFAULT**62A.9-501 Default; procedure when security agreement covers both real and personal property.** (1)

When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) of this section those provided in the security agreement. He or she may reduce his or her claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in RCW 62A.9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in RCW 62A.9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to in (a) through (e) of this subsection may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of RCW 62A.9-504 and RCW 62A.9-505) and with respect to redemption of collateral (RCW 62A.9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of RCW 62A.9-502 and subsection (2) of RCW 62A.9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of RCW 62A.9-504 and subsection (1) of RCW 62A.9-505 which deal with disposition of collateral;

(c) subsection (2) of RCW 62A.9-505 which deals with acceptance of collateral as discharge of obligation;

(d) RCW 62A.9-506 which deals with redemption of collateral; and

(e) subsection (1) of RCW 62A.9-507 which deals with the secured party's liability for failure to comply with this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he or she may proceed as to both the real and the personal property in accordance with his or her rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

(5) When a secured party has reduced his or her claim to judgment the lien of any levy which may be made upon his or her collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article. [1997 c 138 § 1; 1981 c 41 § 34; 1965 ex.s. c 157 § 9-501. Cf. former RCW sections: (i) RCW 61.08.010-61.08.090, 61.08.120. (ii) RCW 61.12.160; Code

1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (iii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-502 Collection rights of secured party. (1)

When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under RCW 62A.9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. [1981 c 41 § 35; 1965 ex.s. c 157 § 9-502.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-503 Secured party's right to take possession after default.

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under RCW 62A.9-504. [1965 ex.s. c 157 § 9-503. Cf. former RCW sections: (i) RCW 61.08.090; Code 1881 § 1989; 1879 p 105 § 4; RRS § 1112. (ii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Transfer of interest in vehicle: RCW 46.12.130.

62A.9-504 Secured party's right to dispose of collateral after default; effect of disposition. (1)

A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article. [1981 c 41 § 36; 1965 ex.s. c 157 § 9-504. Cf. former RCW sections: (i) RCW 61.08.010-61.08.090, 61.08.120. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (iii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Effective date—1981 c 41: See RCW 62A.11-101.

Contractual attorneys' fees to be set by court: RCW 4.84.020.

Foreclosure: RCW 61.12.070, 61.12.140.

Sales under execution: Chapter 6.21 RCW.

Transfer of interest in vehicle: RCW 46.12.130.

62A.9-505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

(1) If the debtor has paid sixty percent of the cash price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under RCW 62A.9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under RCW 62A.9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under RCW 62A.9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. [1981 c 41 § 37; 1965 ex.s. c 157 § 9-505. Cf. former RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Effective date—1981 c 41: See RCW 62A.11-101.

Transfer of interest in vehicle: RCW 46.12.130.

62A.9-506 Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under RCW 62A.9-504 or before the obligation has been discharged under RCW 62A.9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. [1965 ex.s. c 157 § 9-506. Cf. former RCW sections: (i) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (ii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Judgments—Order of sale—Satisfaction—Upset price: RCW 61.12.060.

62A.9-507 Secured party's liability for failure to comply with this part. (1) If it is established that the secured party is not proceeding in accordance with the

provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1965 ex.s. c 157 § 9-507. Cf. former RCW sections: (i) RCW 61.08.070; Code 1881 § 1997; 1879 p 106 § 12; RRS § 1110; prior: 1875 p 47 § 28. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110.]

Judgments—Order of sale—Satisfaction—Upset price: RCW 61.12.060.

Article 10

EFFECTIVE DATE AND REPEALER

Sections

- 62A.10-101 Effective date—1965 ex.s. c 157.
 62A.10-102 Specific repealer; provision for transition.
 62A.10-103 General repealer.
 62A.10-104 Laws not repealed.

62A.10-101 Effective date—1965 ex.s. c 157. This Title shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date. [1965 ex.s. c 157 § 10-101.]

62A.10-102 Specific repealer; provision for transition. (1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

- (a)(i) RCW 22.04.010 through 22.04.610;
 (ii) RCW 23.80.010 through 23.80.250;
 (iii) RCW 30.16.020, 30.16.030, 30.16.040 and 30.16.050;
 (iv) RCW 30.40.030, 30.40.040 and 30.40.050;
 (v) RCW 30.52.010 through 30.52.160;
 (vi) RCW 61.04.010 through 61.04.090;

- (vii) RCW 61.08.010 through 61.08.120;
 (viii) RCW 61.12.160;
 (ix) RCW 61.16.040, 61.16.050 and 61.16.070;
 (x) RCW 61.20.010 through 61.20.190;
 (xi) RCW 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050;
 (xii) RCW 63.04.010 through 63.04.780;
 (xiii) RCW 63.08.010 through 63.08.060;
 (xiv) RCW 63.12.010 through 63.12.030;
 (xv) RCW 63.16.010 through 63.16.900;
 (xvi) RCW 65.08.010, 65.08.020 and 65.08.040; and
 (xvii) RCW 81.32.010 through 81.32.561: PROVIDED,
 That such repeal shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050).
 (b)(i) Chapter 99, Laws of 1913;
 (ii) Chapter 100, Laws of 1939;
 (iii) Section 4, chapter 106, Laws of 1959 and sections 30.16.020, 30.16.030, 30.16.040 and 30.16.050, chapter 33, Laws of 1955;
 (iv) Sections 30.40.030, 30.40.040 and 30.40.050, chapter 33, Laws of 1955;
 (v) Section 3, chapter 194, Laws of 1963 and sections 30.52.010 through 30.52.160, chapter 33, Laws of 1955;
 (vi) Section 11, chapter 263, Laws of 1959, section 3, chapter 214, Laws of 1953, sections 1, 2 and 3, chapter 284, Laws of 1943, section 1, chapter 76, Laws of 1943, section 1, chapter 121, Laws of 1939, section 1, chapter 156, Laws of 1929, sections 1, 2, 3, 4, 5, 6 and 7, chapter 98, Laws of 1899, sections 1986, 1987 and 1988, Code of 1881, section 1, page 104, Laws of 1879, section 1, page 286, Laws of 1877 and section 1, page 43, Laws of 1875;
 (vii) Sections 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998, Code of 1881, sections 4, 5, 6, 7, 8, 9, 10, 11 and 12, pages 105 and 106, Laws of 1879 and sections 18, 19, 20, 22, 23, 24 and 28, page 47, Laws of 1875;
 (viii) Sections 618 and 619, Code of 1881 and section 572, page 147, Laws of 1869;
 (ix) Section 12, chapter 263, Laws of 1959, section 4, chapter 214, Laws of 1953, section 4, chapter 284, Laws of 1943, sections 1 and 2, chapter 133, Laws of 1937 and sections 8, 9 and 11, chapter 98, Laws of 1899;
 (x) Sections 1 and 2, chapter 249, Laws of 1957 and chapter 71, Laws of 1943;
 (xi) Sections 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050, chapter 35, Laws of 1955;
 (xii) Chapter 142, Laws of 1925 extraordinary session;
 (xiii) Sections 1, 2, 3 and 4, chapter 247, Laws of 1953, section 1, chapter 98, Laws of 1943, sections 1, 2, 3 and 4, chapter 122, Laws of 1939 and sections 1, 2, 3 and 4, chapter 135, Laws of 1925 extraordinary session;
 (xiv) Section 22, chapter 236, Laws of 1963, section 1, chapter 159, Laws of 1961, sections 1 and 2, chapter 196, Laws of 1937, sections 1 and 2, chapter 129, Laws of 1933, section 1, chapter 120, Laws of 1925 extraordinary session, section 1, chapter 95, Laws of 1915, sections 1 and 2, chapter 6, Laws of 1903 and sections 1 and 2, chapter 106, Laws of 1893;
 (xv) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, chapter 8, Laws of 1947;

(xvi) Sections 1 and 2, chapter 72, Laws of 1899, section 2327, Code of 1881, section 4, page 413, Laws of 1863 and section 4, page 404, Laws of 1854; and

(xvii) Chapter 159, Laws of 1915 and sections 81.32.011 through 81.32.561, chapter 14, Laws of 1961.

(2) Transactions validly entered into before the effective date specified in RCW 62A.10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Title as though such repeal or amendment had not occurred. [1965 ex.s. c 157 § 10-102.]

62A.10-103 General repealer. Except as provided in the following section, all acts and parts of acts inconsistent with this Title are hereby repealed. [1965 ex.s. c 157 § 10-103.]

62A.10-104 Laws not repealed. The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (RCW 62A.1-201). [1995 c 48 § 71; 1965 ex.s. c 157 § 10-104.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Article 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

Sections

- 62A.11-101 Effective date—1981 c 41.
- 62A.11-102 Preservation of old transition provisions.
- 62A.11-103 Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule.
- 62A.11-104 Transition provision on change of requirement of filing.
- 62A.11-105 Transition provision on change of place of filing.
- 62A.11-106 Required refilings.
- 62A.11-107 Transition provisions as to priorities.
- 62A.11-108 Presumption that rule of law continues unchanged.
- 62A.11-109 Effective financing statement; certificate by county auditor.
- 62A.11-110 Effective date—1993 c 230.
- 62A.11-111 Recovery of attorneys' fees.
- 62A.11-112 Effective date—1993 c 229.
- 62A.11-113 Effective date—1995 c 48.

Reviser's note: Throughout Article 11, "chapter 41, Laws of 1981" is a translation of the term "this act."

62A.11-101 Effective date—1981 c 41. This act shall take effect at midnight on June 30, 1982. [1981 c 41 § 47.]

62A.11-102 Preservation of old transition provisions. The provisions of Article 10 shall continue to apply to the Uniform Commercial Code as amended by chapter 41, Laws of 1981 and for this purpose the Uniform Commercial Code before midnight June 30, 1982 and the Uniform Commercial Code as amended by chapter 41, Laws of 1981

shall be considered one continuous statute. [1981 c 41 § 38.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-103 Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule. Transactions validly entered into after June 30, 1967 and before midnight June 30, 1982, and which were subject to the provisions of the Uniform Commercial Code as it existed before midnight June 30, 1982 and which would be subject to the Uniform Commercial Code as amended if they had been entered into after midnight June 30, 1982 and the rights, duties and interests flowing from such transactions remain valid after midnight June 30, 1982 and may be terminated, completed, consummated or enforced as required or permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. Security interests arising out of such transactions which are perfected by midnight June 30, 1982 shall remain perfected until they lapse as provided in the Uniform Commercial Code as amended by chapter 41, Laws of 1981, and may be continued as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except as stated in RCW 62A.11-105. [1981 c 41 § 39.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-104 Transition provision on change of requirement of filing. A security interest for the perfection of which filing or the taking of possession was required under the Uniform Commercial Code as it existed before midnight June 30, 1982 and which attached prior to midnight June 30, 1982 but was not perfected shall be deemed perfected on midnight June 30, 1982 if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made. [1981 c 41 § 40.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-105 Transition provision on change of place of filing. (1) A financing statement or continuation statement filed prior to midnight June 30, 1982 which shall not have lapsed prior to midnight June 30, 1982, shall remain effective for the period provided in the Uniform Commercial Code as it existed before midnight June 30, 1982, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to midnight June 30, 1982, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under chapter 41, Laws of 1981.

(3) The effectiveness of any financing statement or continuation statement filed prior to midnight June 30, 1982 may be continued by a continuation statement as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except that if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 requires a filing in an office where there was no previous financing

statement, a new financing statement conforming to RCW 62A.11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subsection (6) of RCW 62A.9-402 as amended by chapter 41, Laws of 1981 on midnight June 30, 1982. [1981 c 41 § 41.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-106 Required refilings. (1) If a security interest is perfected or has priority on midnight June 30, 1982, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the Uniform Commercial Code as amended by chapter 41, Laws of 1981, the perfection and priority rights of the security interest continue until three years after midnight June 30, 1982. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of RCW 62A.9-302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by chapter 41, Laws of 1981 which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by chapter 41, Laws of 1981), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by chapter 41, Laws of 1981 is still effective. RCW 62A.9-401 and 62A.9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of RCW 62A.9-403(3) for

continuation statements apply to such a financing statement. [1981 c 41 § 42.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-107 Transition provisions as to priorities.

Except as otherwise provided in this article, the Uniform Commercial Code as it existed before midnight June 30, 1982 shall apply to any questions of priority if the positions of the parties were fixed prior to midnight June 30, 1982. In other cases questions of priority shall be determined by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. [1981 c 41 § 43.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-108 Presumption that rule of law continues unchanged. Unless a change in law has clearly been made, the provisions of the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be deemed declaratory of the meaning of the Uniform Commercial Code as it existed before midnight June 30, 1982. [1981 c 41 § 44.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-109 Effective financing statement; certificate by county auditor. From and after midnight June 30, 1982, upon request of any person, the county auditor shall issue his certificate showing whether there is on file with the county auditor's office on the date and hour stated therein, any presently effective financing statement filed with the county auditor's office before midnight June 30, 1982, naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be four dollars. Upon request the county auditor shall issue his certificate and shall furnish a copy of any filed financing statements or statements of assignment for a uniform fee of ten dollars for each particular debtor's statements requested. [1981 c 41 § 45.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-140 Effective date—1993 c 230. This act shall take effect July 1, 1994. [1993 c 230 § 2A-605.]

62A.11-111 Recovery of attorneys' fees. No provision in this act changes or modifies existing common law or other law of Washington state concerning the recovery of attorneys' fees. [1993 c 229 § 119.]

62A.11-112 Effective date—1993 c 229. This act shall take effect July 1, 1994. [1993 c 229 § 120.]

62A.11-113 Effective date—1995 c 48. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 48 § 72.]

Savings—1995 c 48: See RCW 62A.8-601.

Title 63

PERSONAL PROPERTY

Chapters

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

Attachment: Chapter 6.25 RCW.

Chattel mortgages: Article 62A.9 RCW.

Community property: Chapter 26.16 RCW.

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

*Corporate shares issued or transferred in joint tenancy form—
Presumption—Transfer pursuant to direction of survivor:* RCW
23B.07 240.

County property: Chapter 36.34 RCW.

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

Duration of trusts for employee benefits: Chapter 49.64 RCW.

Enforcement of judgments: Title 6 RCW.

Fox, mink, marten declared personalty: RCW 16.72.030.

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

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Leases, satisfaction: Chapter 61.16 RCW.

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

Powers of appointment: Chapter 11.95 RCW.

Probate and trust law: Title 11 RCW.

Quieting title to personalty: RCW 7.28.310, 7.28.320.

Real property and conveyances: Title 64 RCW.

Replevin: Chapters 7.64, 12.28 RCW.

Safe deposit companies: Chapter 22.28 RCW.

Separate property: Chapter 26.16 RCW.

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

Taxation

estate: Title 83 RCW.

excise: Title 82 RCW.

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The Washington Principal and Income Act: Chapter 11.104 RCW.

Timeshare regulation: Chapter 64.36 RCW.

Transfers in trust: RCW 19.36.020.

Uniform transfers to minors act: Chapter 11.114 RCW.

Chapter 63.10 CONSUMER LEASES

Sections

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

Installment sales contracts: Chapter 63.14 RCW.

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

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

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

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

supersedes the definition of gross capitalized cost in this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) In consumer leases of motor vehicles:

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

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

(iii) A statement of adjusted capitalized cost;

(iv) If the lessee trades in a motor vehicle, the amount of any sales tax exemption for the agreed value of the traded vehicle and any reduction in the periodic payments resulting

from the application of the sales tax exemption shall be disclosed in the lease contract; and

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

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

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

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

(2) Misrepresenting any of the following:

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

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

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

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

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

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

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

63.10.060 Defense or action of usury—Limitations. No person may plead the defense of usury or maintain any

action thereon based upon a transaction heretofore entered into if such transaction:

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

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

(i) The lessee was not a natural person;

(ii) The lease was not primarily for personal, family, or household purposes; or

(iii) The total contractual obligation exceeded twenty-five thousand dollars. [1983 c 158 § 8.]

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

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

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

Chapter 63.14

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

Sections

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Consumer leases: Chapter 63.10 RCW.

Interest—Usury: Chapter 19.52 RCW.

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

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

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

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

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

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

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

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

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

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

(ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

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

(11) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, any vehicle dealer administrative fee under RCW 46.12.042, or official fees;

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

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

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

(15) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, and official fees;

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

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

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

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

Severability—1983 c 158: See RCW 63.10.900.

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

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

63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size. Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in RCW 63.14.050, 63.14.060 and 63.14.110: PROVIDED, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: PROVIDED FURTHER, That any such promissory note or other evidence of indebtedness executed by the buyer shall not, when assigned or negotiated, cut off as to third parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: AND PROVIDED FURTHER, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this chapter.

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

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

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

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

- (1)(a) The sale price of each item of goods or services;
- (2)(b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;
- (3)(c) The difference between items (1)(a) and (2)(b);
- (4)(d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;
- (5)(e) The aggregate amount of official fees, if any;
- (6)(f) The principal balance, which is the sum of items (3)(c), (4)(d) and (5)(e);
- (7)(g) The dollar amount or rate of the service charge;
- (8)(h) The amount of the time balance owed by the buyer to the seller, which is the sum of items (6)(f) and (7)(g), if (7)(g) is stated in a dollar amount; and
- (9)(i) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

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

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

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

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

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

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

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

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller's business address shown on the contract. [1981

c 77 § 3; 1972 ex.s. c 47 § 2; 1969 c 2 § 1 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 3; 1963 c 236 § 4.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The service charge, in a retail installment contract, shall not exceed the dollar amount or rate agreed to by contract and disclosed under RCW 63.14.040(1)(7)(g).

(2) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed the schedule or rate agreed to by contract and disclosed under RCW 63.14.120(1). If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

[1997 c 331 § 7; 1992 c 193 § 1. Prior: 1989 c 112 § 1; 1989 c 14 § 5; 1987 c 318 § 1; 1984 c 280 § 5; 1981 c 77 § 5; 1969 c 2 § 3 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 8; 1963 c 236 § 13.]

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

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

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

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

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

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

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

(1) The contract or agreement shall state the nature, purpose, term, and amount of such insurance, and in connection with the sale of a motor vehicle, the contract shall state that the insurance coverage ordered under the terms of this contract does not include "bodily injury liability," "public liability," and "property damage liability" coverage, where such coverage is in fact not included;

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

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

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

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

assignment, the retail installment contract or charge agreement remains a retail installment contract or charge agreement.

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

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

63.14.151 Retail installment contracts, retail charge agreements, and lender credit card agreements—Compliance with disclosure requirements of federal consumer protection act deemed compliance with chapter 63.14 RCW. Any retail installment contract, retail charge agreement, or lender credit card agreement that complies with the disclosure requirements of Title I of the federal consumer protection act (82 Stat. 146, 15 U.S.C. 1601) which is also known as the truth in lending act, as of the date upon which said retail installment contract, revolving charge agreement, or lender credit card agreement is executed, shall be deemed to comply with the disclosure provisions of chapter 63.14 RCW. [1984 c 280 § 8; 1981 c 77 § 9.]

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

63.14.152 Declaratory judgment action to establish if service charge is excessive. The seller, holder, or buyer may bring an action for declaratory judgment to establish whether service charges contracted for or received in connection with a retail installment transaction are in excess of those allowed by chapter 234, Laws of 1967. Such an action shall be brought against the current holder or against the buyer or his successor in interest or, if the entire principal balance has been fully paid, by the buyer or his successor in interest against the holder to whom the final payment was made. No such action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal balance is fully paid, whichever first occurs. If the buyer commences such an action and fails to

establish that the service charge is in excess of that allowed by RCW 63.14.130, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees and costs from the buyer. [1967 c 234 § 11.]

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

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

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

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

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

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

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

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

* (2) "This act" consists of the enactment of RCW 19.158.010 through 19.158.160, 19.158.900, and 19.158.901, and the 1989 c 20 amendments to RCW 9A.82.010 and 63.14.154.

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

63.14.156 Extension or deferment of payments—Agreement, charges. The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer a scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless a written acknowledgment of such extension or deferment is sent or delivered to the buyer. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed those permitted by *RCW 63.14.130 (a), (b), or (c) on the amount

of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of RCW 63.14.140. [1967 c 234 § 13.]

***Reviser's note:** The reference to RCW 63.14.130 (a), (b), or (c) is erroneous. RCW 63.14.130(1) (a) or (b) is apparently intended. Subsequently, RCW 63.14.130 was amended by 1992 c 193 § 2, changing the subsection numbering. The amendment will expire on June 30, 1995.

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

The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under RCW 63.14.080 if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by clause (d) of subsection (1) of such section, and (2) may not exceed the rate of service charge provided under RCW 63.14.130. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of RCW 63.14.140.

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

Minimum earned service charges: RCW 63.14.080.

63.14.159 New payment schedule—When authorized. In the event a contract provides for the payment of any installment which is more than double the amount of the

average of the preceding installments the buyer upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater than the average of the preceding installments. This section shall not apply if the payment schedule is adjusted to the seasonal or irregular income of the buyer or to accommodate the nature of the buyer's employment. [1967 c 234 § 15.]

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

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

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

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

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

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

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

(4) An issuer issuing a lender credit card or financial institution credit card shall mail or deliver a notice of the provisions of this section at least once per calendar year, at

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

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

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

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

63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery. Any person who enters into a retail installment contract, charge agreement, or lender credit card agreement that does not comply with the provisions of this chapter or who violates any provision of this chapter except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchases under a retail charge agreement or lender credit card agreement; but such person may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to such person of any insurance included in the transaction: PROVIDED, That if the service charge is in excess of that allowed by RCW 63.14.130, except as the result of an accidental or bona fide error, the buyer shall be entitled to an amount equal to the total of (1) twice the amount of the service charge paid, and (2) the amount of the service charge contracted for and not paid, plus (3) costs and reasonable attorneys' fees. The reduction in the cash price by the application of the above sentence shall be applied to diminish pro rata each future installment of principal amount payable under the terms of the contract or agreement. [1984 c 280 § 12; 1967 c 234 § 10; 1963 c 236 § 18.]

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

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

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

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

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

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

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

63.14.904 Severability—1984 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of

the provision to other persons or circumstances is not affected. [1984 c 280 § 13.]

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

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

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

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

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

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

63.14.925 Savings—1995 c 249. The repeals in section 1, chapter 249, Laws of 1995 shall not be construed as affecting any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted pursuant to those statutes; nor as affecting any proceeding instituted under them. [1995 c 249 § 3.]

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

Chapter 63.18

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

Sections

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

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

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

Chapter 63.19

LEASE-PURCHASE AGREEMENTS

Sections

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

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

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

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

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

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

(5) "Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for

personal, family, or household purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

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

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

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

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

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

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

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

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

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

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

- (a) The total number, total amount, and timing of all payments necessary to acquire ownership of the property;
- (b) A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;
- (c) A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;

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

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

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

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

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

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

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

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

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

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

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

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

- (1) A confession of judgment;
- (2) A negotiable instrument;
- (3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
- (4) A wage assignment;
- (5) A waiver by the consumer of claims or defenses; or
- (6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods. [1992 c 134 § 6.]

63.19.060 Consumer—Reinstatement of agreement—Terms. (1) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing

any rights or options that exist under the agreement, by the payment of:

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

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

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

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

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

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

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

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

63.19.090 Advertising—Requirements—Liability. (1) If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the adver-

tisement shall also clearly and conspicuously state the following items, as applicable:

- (a) That the transaction advertised is a lease-purchase agreement;
 - (b) The total of payments necessary to acquire ownership; and
 - (c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.
- (2) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.
- (3) The provisions of subsection (1) of this section shall not apply to an advertisement that does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business. [1992 c 134 § 10.]

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

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

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

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

Chapter 63.21

LOST AND FOUND PROPERTY

Sections

- 63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication.
- 63.21.020 Circumstances extinguishing finder's claim to property.
- 63.21.030 Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim.
- 63.21.040 Failure to comply with chapter—Forfeiture of right to property.
- 63.21.050 Duties of chief law enforcement officer receiving found property.
- 63.21.060 Duties of governmental entity acquiring lost property—Disposal of property.
- 63.21.070 Claim to found property by employee, officer, or agent of governmental entity—Limitation.
- 63.21.080 Chapter not applicable to certain unclaimed property.
- 63.21.900 Severability—1979 ex.s. c 85.

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

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

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

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

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

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

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

63.21.030 Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim. (1) The found property shall be released to the finder and become the property of the finder sixty days after the find was reported to the appropriate officer if no owner has been found, or sixty days after the final disposition of any judicial or other official proceeding involving the property, whichever is later. The property shall be released only after the finder has presented evidence of payment to the treasurer of the governmental entity handling the found property, the amount of ten dollars plus the amount of the cost of publication of notice incurred by the government [governmental] entity pursuant to RCW 63.21.010, which amount shall be deposited in the general fund of the governmental entity. If the appraised value of the property is less than the cost of publication of notice of the finding, then the finder is not required to pay any fee.

(2) When ninety days have passed after the found property was reported to the appropriate officer, or ninety days after the final disposition of a judicial or other proceeding involving the found property, and the finder has not

completed the requirements of this chapter, the finder's claim shall be deemed to have expired and the found property may be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. Such laws shall also apply whenever a finder states in writing that he or she has no intention of claiming the found property. [1997 c 237 § 2; 1979 ex.s. c 85 § 3.]

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

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

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

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

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

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

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

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

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

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

63.21.060 Duties of governmental entity acquiring lost property—Disposal of property. Any governmental entity that acquires lost property shall attempt to notify the apparent owner of the property. If the property is not returned to a person validly establishing ownership or right to possession of the property, the governmental entity shall forward the lost property within thirty days but not less than ten days after the time the governmental entity acquires the lost property to the chief law enforcement officer, or his or her designated representative, of the county in which the property was found, except that if the property is found within the borders of a city or town the property shall be forwarded to the chief law enforcement officer of the city or town or his or her designated representative. A governmen-

tal entity may elect to retain property which it acquires and dispose of the property as provided by chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 6.]

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

63.21.080 Chapter not applicable to certain unclaimed property. This chapter shall not apply to:
 (1) Motor vehicles under chapter 46.52 RCW;
 (2) Unclaimed property in the hands of a bailee under chapter 63.24 RCW;
 (3) Uniform disposition of unclaimed property under chapter 63.29 RCW; and
 (4) Secured vessels under chapter 88.27 RCW. [1994 c 51 § 6; 1985 c 7 § 125; 1979 ex.s. c 85 § 8.]
Severability—1994 c 51: See RCW 88.27.900.

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

Chapter 63.24

UNCLAIMED PROPERTY IN HANDS OF BAILEE

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

Abandoned inmate personal property: Chapter 63.42 RCW.
Unclaimed property in hands of state patrol: Chapter 63.35 RCW.

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

63.24.160 Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff. If property not covered by chapter 63.26 RCW remains unclaimed sixty days after notice is given, or, if the owner's identity or address is unknown, sixty days from when notice was attempted, the bailee shall:

- (1) If the reasonable aggregate value of the unclaimed property is less than one hundred dollars, donate the property, or proceeds thereof, to a charitable organization exempt

from federal income tax under the federal internal revenue code; or

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

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

Chapter 63.26

UNCLAIMED PROPERTY HELD BY MUSEUM OR HISTORICAL SOCIETY

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

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

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

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

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

63.26.030 Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of chapter. (1) Property subject to a loan agreement which is on loan to a museum or historical society shall be

deemed to be donated to the museum or society if no claim is made or action filed to recover the property after termination or expiration of the loan and if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed within ninety days from the date of the second published notice.

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

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

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

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

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

(2) The published notice shall contain:

(a) A description of the unclaimed property;

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

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

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

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

63.26.050 Vesting of title in museum or historical society—Subsequent purchase from museum or historical society. (1) If no written assertion of title has been presented by the owner to the museum or society within ninety days

from the date of the second published notice, title to the property shall vest in the museum or historical society, free of all claims of the owner and of all persons claiming under the owner.

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

Chapter 63.29

UNIFORM UNCLAIMED PROPERTY ACT

Sections	
63.29.010	Definitions and use of terms.
63.29.020	Property presumed abandoned—General rule.
63.29.030	General rules for taking custody of intangible unclaimed property.
63.29.033	Property presumed abandoned—State or subdivision is originator or issuer.
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63.29.340	Interest and penalties.
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63.29.900	Effect of new provisions—Clarification of application.
63.29.901	Captions not law—1983 c 179.
63.29.902	Uniformity of application and construction.
63.29.903	Short title.
63.29.904	Severability—1983 c 179.
63.29.905	Effective date—1983 c 179.
63.29.906	Effective date—1996 c 45.

Abandoned inmate personal property: Chapter 63.42 RCW.

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

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

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

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

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

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

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

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

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

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

(a) In possession of property belonging to another,

(b) A trustee, or

(c) Indebted to another on an obligation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63.29.020 Property presumed abandoned—General rule.

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

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

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

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

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

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

(b) The property is donated to a bona fide charity. [1992 c 122 § 1; 1988 c 226 § 2; 1983 c 179 § 2.]

63.29.030 General rules for taking custody of intangible unclaimed property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

all such states and the issuer may rely with acquittance upon such list.

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

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

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

63.29.060 Bank deposits and funds in financial organizations. (1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within five years, has:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Any property described in subsection (1) of this section that is automatically renewable is matured for purposes of subsection (1) of this section upon the expiration of its initial time period, or after one year if the initial period is less than one year, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in RCW 63.29.190, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. [1983 c 179 § 6.]

63.29.070 Funds owing under life insurance policies.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured. [1983 c 179 § 7.]

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

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

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

63.29.100 Stock and other intangible interests in business associations. (1) Except as provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for five years and the owner within five years has not:

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

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

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

five dividends, distributions, or other sums that have not been claimed by the owner.

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

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

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

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

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

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

63.29.120 Property held by agents and fiduciaries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Severability—1988 c 240: See RCW 19.150.904.

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

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

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

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

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

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

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

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

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while

holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1 of each year and shall include all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On written request by any person required to file a report, the department may postpone the reporting date.

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

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

(ii) The claim of the apparent owner is not barred by the statute of limitations, and

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

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

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

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

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

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

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

(5) The mailed notice must contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Property removed from a safe deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed

for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The department shall reimburse or pay the holder out of the proceeds remaining after deducting the department's selling cost. The liability of the department for this reimbursement to the holder shall be limited to the proceeds of the sale of the property remaining after the deduction of the department's costs. [1983 c 179 § 20.]

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

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

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

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

(4) Unless the department considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under RCW 63.29.100 and delivered to the department must be held for at least three years before being sold. If the department sells any securities delivered pursuant to RCW 63.29.100 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to RCW 63.29.230(2). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any

amounts deducted pursuant to RCW 63.29.230(2), but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the department.

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

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

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

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

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

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

(3) If a claim is allowed, the department shall pay over or deliver to the claimant the property or the amount the department actually received or the net proceeds if it has been sold by the department, together with any additional amount required by RCW 63.29.210. If the claim is for property presumed abandoned under RCW 63.29.100 which was sold by the department within three years after the date

of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the department also shall pay interest at the legal rate or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the department and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before June 30, 1983.

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

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

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

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

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

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

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

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

(3) The department shall require a state, before recovering property under this section, to agree to indemnify this

state and its officers and employees against any liability on a claim for the property. [1983 c 179 § 25.]

63.29.260 Action to establish claim. A person aggrieved by a decision of the department or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the superior court of Thurston county naming the department as a defendant. The action must be brought within ninety days after the decision of the department or within one hundred eighty days after the filing of the claim if the department has failed to act on it. [1983 c 179 § 26.]

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

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

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

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

(2) No action or proceeding may be commenced by the department with respect to any duty of a holder under this

chapter more than six years after the duty arose. [1983 c 179 § 29.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hundred percent of the value of the property which should have been reported, paid or delivered.

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

Reviser's note: This section was amended by 1996 c 45 § 4 and by 1996 c 149 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

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

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

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

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

(2) The initial report to be filed under this chapter shall include all property which is presumed abandoned under this chapter. The report shall include property that was not required to be reported before June 30, 1983, but which

would have been presumed abandoned on or after September 1, 1979 under the terms of chapter 63.29 RCW.

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

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

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

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

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

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

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

Chapter 63.32

UNCLAIMED PROPERTY IN HANDS OF CITY POLICE

Sections

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

63.32.010 Methods of disposition—Notice—Sale, retention, destruction, or trade. Whenever any personal property shall come into the possession of the police authorities of any city in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in

all other cases for a period of sixty days from the time said property came into the possession of the police department, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said city may:

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

(2) Retain the property for the use of the police department subject to giving notice in the manner prescribed in RCW 63.32.020 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief of police, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the police department shall provide the city's mayor or council and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

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

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

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

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

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

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

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

63.32.020 Notice of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in the official newspaper of said city at least ten days prior to the date fixed for said sale. The notice shall be signed by the chief or other head of the police department of

such city. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief or other head of the police department shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 2; 1925 ex.s. c 100 § 2; RRS § 8999-2.]

63.32.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be paid into the police pension fund of said city if such fund exists; otherwise into the city current expense fund. [1939 c 148 § 2; 1925 ex.s. c 100 § 3; RRS § 8999-3.]

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

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

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

Chapter 63.35

UNCLAIMED PROPERTY IN HANDS OF STATE PATROL

Sections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63.35.030 Notice of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in a newspaper of general circulation in the county in which the property is to be sold at least ten days prior to the date fixed for the auction. The notice shall be signed by the chief. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1989 c 222 § 3.]

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

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

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

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

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

Chapter 63.40

UNCLAIMED PROPERTY IN HANDS OF SHERIFF

Sections

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

63.40.010 Methods of disposition—Notice—Sale, retention, destruction, or trade. Whenever any personal property, other than vehicles governed by chapter 46.52 RCW, shall come into the possession of the sheriff of any county in connection with the official performance of his duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the sheriff's office, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said county sheriff may:

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

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

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

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

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

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

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

property for purpose of annual listing requirements of subsection (2) of this section; or

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

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

63.40.020 Notice of sale, form, contents—Conduct of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The notice shall be signed by the sheriff or his deputy. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 4; 1961 c 104 § 2.]

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

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

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

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

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

Chapter 63.42

UNCLAIMED INMATE PERSONAL PROPERTY

Sections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63.42.030 Personal property presumed abandoned—Illegal items retained as evidence or destroyed.

(1) All personal property, and any income or increment which has accrued thereon, held for the owner by an

institution that has remained unclaimed for more than six months from the date the owner terminated without authorization from work training release, transferred to a different institution, or when the owner is unknown or deceased, from the date the property was placed in the custody of the institution, is presumed abandoned: PROVIDED, That the provisions of this section shall be extended for up to six months for any inmate, transferred to another institution, who has no recorded next of kin, or person to whom the unclaimed property can be sent.

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

(3) All illegal items owned by and in the possession of an inmate shall be confiscated and held by the institution to which the inmate is assigned. Such items shall be held as required for evidence for law enforcement authorities. Illegal items not retained for evidence shall be destroyed. [1983 1st ex.s. c 52 § 3.]

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

63.42.040 Disposition of property presumed abandoned—Inventory—Notice.

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

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

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

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

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

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

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

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

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

Chapter 63.44 JOINT TENANCIES

Sections

63.44.010 Joint tenancies in property.

63.44.010 Joint tenancies in property. See chapter 64.28 RCW.

Chapter 63.48 ESCHEAT OF POSTAL SAVINGS SYSTEM ACCOUNTS

Sections

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

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

63.48.020 Director to request federal records. The director of revenue shall request from the bureau of accounts of the United States treasury department records providing the following information: The names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office

department, and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state. [1971 ex.s. c 68 § 2.]

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

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

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

(2) A general notice of intention to escheat postal savings system accounts shall be published once in each of three successive weeks in one or more newspapers which combine to provide general circulation throughout this state.

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

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

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

Chapter 63.52 DIES, MOLDS, AND FORMS

Sections

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

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

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

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

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

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

(2) If a customer does not claim possession from a molder of a die, mold, or form within three years after the last use of the die, mold, or form, title and all rights to the die, mold, or form may be transferred to the molder for the purpose of destroying or otherwise disposing of the die, mold, or form.

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

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

Chapter 63.60 PERSONALITY RIGHTS

Sections

- 63.60.010 Use of name, voice, signature, photograph, or likeness is a
property right.
63.60.020 Definitions.

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

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

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

(1) "Deceased personality" means any individual whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of, products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998.

(2) "Definable group" means an assemblage of individuals existing or brought together with or without interrelation, orderly form, or arrangement, including but not limited to: A crowd at any sporting event; a crowd in any street or public building; the audience at any theatrical, musical, or stage production; or a performing group or sports team.

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

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

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

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

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

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

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

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

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

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

(b) If the individual or personality, as the case may be, transferred or assigned any interest in the personality rights during his or her life, then the transferred or assigned interest shall pass as follows:

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

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

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

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

succession applicable to interests in intangible personal property of the third person's domicile.

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

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

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

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

63.60.050 Infringement of right—Use without consent—Profit or not for profit. Any person who uses or authorizes the use of a living or deceased individual's or personality's name, voice, signature, photograph, or likeness, on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising or solicitation of donations, or if any person disseminates or publishes such advertisements in this state, without written or oral, express or implied consent of the owner of the right, has infringed such right. An infringement may occur under this section without regard to whether the use or activity is for profit or not for profit. [1998 c 274 § 5.]

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

(2) Any person who infringes the rights under this chapter shall be liable for the greater of one thousand five hundred dollars or the actual damages sustained as a result of the infringement, and any profits that are attributable to

the infringement and not taken into account when calculating actual damages. To prove profits under this section, the injured party or parties must submit proof of gross revenues attributable to the infringement, and the infringing party is required to prove his or her deductible expenses. For the purposes of computing statutory damages, use of a name, voice, signature, photograph, and/or likeness in or related to one work constitutes a single act of infringement regardless of the number of copies made or the number of times the name, voice, signature, photograph, or likeness is displayed.

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

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

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

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

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

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

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

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

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

(d) An advertisement, commercial announcement, or packaging for the authorized sale, distribution, performance, broadcast, or display of a literary, musical, cinematographic,

or other artistic work using the name, voice, signature, photograph, or likeness of the writer, author, composer, director, actor, or artist who created the work, where such individual or personality consented to the use of his or her name, voice, signature, photograph, or likeness on or in connection with the initial sale, distribution, performance, or display thereof; and

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

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

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

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

(6) This chapter does not apply to the use of an individual's or personality's name, voice, signature, photograph, or likeness when the use of the individual's or personality's name, voice, signature, photograph, or likeness is an insignificant, de minimis, or incidental use. [1998 c 274 § 7.]

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

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

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

Actions, where commenced: RCW 4.12.010.

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

Adverse possession: Chapter 7.28 RCW.

Alien property custodian: RCW 4.28.330.

Attachment: Chapter 6.25 RCW.

Boundaries and plats: Title 58 RCW.

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

Cemetery property: Chapter 68.28 RCW.

Commissioners to convey real estate: Chapter 6.28 RCW.

Community property: Chapter 26.16 RCW.

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

Default in rent: Chapter 59.08 RCW.

Discrimination—Human rights commission: Chapter 49.60 RCW.

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

Donation law, conflicting claims: RCW 7.28.280.

Ejectment: Chapter 7.28 RCW.

Eminent domain: Title 8 RCW; State Constitution Art. 1 § 16 (Amendment 9).

Estates of absentees: Chapter 11.80 RCW.

Excise tax, real estate sales: Chapter 82.45 RCW.

Execution and redemptions, sales under: Chapter 6.21 RCW.

Executions: Chapter 6.17 RCW.

Federal areas

acquisition of land by United States: RCW 37.04.010.

jurisdiction in special cases: Chapter 37.08 RCW.

Federal property, purchase of: Chapter 39.32 RCW.

Federally assisted housing: Chapter 59.28 RCW.

Fences: Chapter 16.60 RCW.

Forcible entry: Chapter 59.12 RCW.

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

Forests and forest products: Title 76 RCW.

Geological survey, entry on lands: RCW 43.92.080.

Homesteads: Chapter 6.13 RCW.

Housing authorities law: Chapter 35.82 RCW.

Housing cooperation law: Chapter 35.83 RCW.

Indians and Indian lands: Chapter 37.12 RCW.

Intergovernmental disposition of property: Chapter 39.33 RCW.

Joint tenants, simultaneous death: RCW 11.05.030.

Landlord and tenant: Title 59 RCW.

Legal publications: Chapter 65.16 RCW.

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

Liens

landlord's: Chapter 60.72 RCW.

mechanics' and materialmen's: Chapter 60.04 RCW.

orchard lands: Chapter 60.16 RCW.

timber and lumber: Chapter 60.24 RCW.

Limitation of actions: Chapter 4.16 RCW.

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

Lis pendens: RCW 4.28.160, 4.28.320.

Mortgages and trust receipts: Title 61 RCW.

Nuisances: Chapters 7.48, 9.66 RCW.

Partition: Chapter 7.52 RCW.

Personal exemptions: Chapter 6.15 RCW.

Power of attorney, recording of revocation: RCW 65.08.130.

Probate and trust law: Title 11 RCW.

Property taxes: Title 84 RCW.

Public lands: Title 79 RCW.

Public lands, trespass: Chapter 79.40 RCW.

Quieting title: Chapter 7.28 RCW.

Real estate brokers and salespersons: Chapter 18.85 RCW.

Real property, false representation concerning title: RCW 9.38.020.

Recording: Chapters 65.04, 65.08 RCW.

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

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

Residential Landlord-Tenant Act: Chapter 59.18 RCW.

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

Separate property: Chapter 26.16 RCW.

Tenancies: Chapter 59.04 RCW.

The Washington Principal and Income Act: Chapter 11.104 RCW.

Unlawful entry and detainer: Chapter 59.16 RCW.

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

Water rights: Title 90 RCW.

Chapter 64.04 CONVEYANCES

Sections

- 64.04.005 Earnest money deposit—Exclusive remedy—Definition
- 64.04.010 Conveyances and encumbrances to be by deed.
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- 64.04.190 Public utility and transportation corridors—Defined.
- 64.04.200 Existing rate or charge for energy conservation—Seller's duty to disclose.

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

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

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

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

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

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

Recording of deeds and conveyances: Title 65 RCW.

64.04.005 Earnest money deposit—Exclusive remedy—Definition. (1)(a) A provision in a written agreement for the purchase and sale of real estate which provides for the forfeiture of an earnest money deposit to the

seller as the seller's sole and exclusive remedy if the purchaser fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the seller incurs any actual damages, PROVIDED That:

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

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

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

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

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

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

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

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

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

(4) For purposes of this section, "earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser. [1991 c 210 § 1.]

Application—1991 c 210: "The provisions of this act apply only to written agreements entered on or after July 28, 1991." [1991 c 210 § 2.]

64.04.010 Conveyances and encumbrances to be by deed. Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid. [1929 c 33 § 1;

RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

64.04.020 Requisites of a deed. Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

*Reviser's note: The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

64.04.030 Warranty deed—Form and effect. Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of . . . , state of Washington. Dated this . . . day of . . . , 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

64.04.040 Bargain and sale deed—Form and effect. Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants: The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells and conveys to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of . . . , state of Washington. Dated this . . . day of . . . , 19. . .

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs,

executors, administrators and assigns may recover in any action for breaches as if such covenants were expressly inserted. [1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

64.04.050 Quitclaim deed—Form and effect. Quitclaim deeds may be in substance in the following form:

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of . . . , state of Washington. Dated this . . . day of . . . , 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. [1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

64.04.055 Deeds for conveyance of apartments under horizontal property regimes act. All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the conveyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120. [1963 c 156 § 29.]

64.04.060 Word "heirs" unnecessary. The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple. [1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

64.04.070 After acquired title follows deed. Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his and their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or their heirs and assigns, and shall thereafter run with such land. [1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

64.04.080 Purchaser of community real property protected by record title. See RCW 26.16.095.

64.04.090 Private seals abolished. The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [1923 c 23 § 1; RRS § 10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

64.04.100 Private seals abolished—Validation. All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid. [1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

64.04.105 Corporate seals—Effect of absence from instrument. The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect. [1957 c 200 § 1.]

64.04.120 Registration of land titles. See chapter 65.12 RCW.

64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances. A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest shall constitute and be classified as real property. All instruments for the conveyance thereof shall be substantially in the form required by law for the conveyance of any land or other real property.

As used in this section, "nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat.

As used in this section, "nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and

which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state, including conservation or preservation of historic sites, districts, buildings, and artifacts. [1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.

Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.

64.04.135 Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception. The criteria for monitoring historical conformance shall not exceed those included in the original donation agreement, unless agreed to in writing between grantor and grantee. [1987 c 341 § 4.]

64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized. The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated. [1979 ex.s. c 170 § 1.]

Severability—1979 ex.s. c 170: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 170 § 15.]

64.04.150 Solar easements—Definitions. (1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (i) The heating or cooling of a structure or building;
- (ii) The heating or pumping of water;
- (iii) Industrial, commercial, or agricultural processes; or
- (iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to ascertain the extent of the easement. Such description may be made by describing the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement. [1979 ex.s. c 170 § 12.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.160 Solar easements—Creation. A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement. [1979 ex.s. c 170 § 14.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.170 Interference with solar easement—Remedies. In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney’s fees as fixed by the court; and

(3) An injunction against the interference. [1979 ex.s. c 170 § 13.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.175 Easements established by dedication—Extinguishing or altering. Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or

methods to extinguish or alter the easement. [1991 c 132 § 1.]

64.04.180 Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest. Railroad properties, including but not limited to rights-of-way, land held in fee and used for railroad operations, bridges, tunnels, and other facilities, are declared to be suitable for public use upon cessation of railroad operations on the properties. It is in the public interest of the state of Washington that such properties retain their character as public utility and transportation corridors, and that they may be made available for public uses including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. Nothing in this section or in RCW 64.04.190 authorizes a public agency or utility to acquire reversionary interests in public utility and transportation corridors without payment of just compensation. [1988 c 16 § 1; 1984 c 143 § 22.]

64.04.190 Public utility and transportation corridors—Defined. Public utility and transportation corridors are railroad properties (1) on which railroad operations have ceased; (2) that have been found suitable for public use by an order of the Interstate Commerce Commission of the United States; and (3) that have been acquired by purchase, lease, donation, exchange, or other agreement by the state, one of its political subdivisions, or a public utility. [1988 c 16 § 2; 1984 c 143 § 23.]

64.04.200 Existing rate or charge for energy conservation—Seller’s duty to disclose. Prior to closing, the seller of real property subject to a rate or charge for energy conservation measures, services, or payments provided under a tariff approved by the utilities and transportation commission pursuant to RCW 80.28.065 shall disclose to the purchaser of the real property the existence of the obligation and the possibility that the purchaser may be responsible for the payment obligation. [1993 c 245 § 3.]

Findings—Intent—1993 c 245: See note following RCW 80.28.065.

Chapter 64.06

RESIDENTIAL REAL PROPERTY TRANSFERS—SELLER’S DISCLOSURES

Sections	
64.06.005	Application—Definition of residential real property.
64.06.010	Application—Exceptions for certain transfers of residential real property.
64.06.020	Seller’s duty—Format of disclosure statement—Minimum information.
64.06.030	Delivery of disclosure statement—Buyer’s options—Time frame.
64.06.040	After delivery of disclosure statement—Additional information—Seller’s duty—Buyer’s options—Closing the transaction.
64.06.050	Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability.
64.06.060	Consumer protection act does not apply.
64.06.070	Buyer’s rights or remedies.
64.06.900	Effective date—1994 c 200.

64.06.005 Application—Definition of residential real property. This chapter applies only to residential real property. For purposes of this chapter, residential real property means:

- (1) Real property consisting of, or improved by, one to four dwelling units;
- (2) A residential condominium as defined in RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW; or
- (3) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW. [1994 c 200 § 1.]

64.06.010 Application—Exceptions for certain transfers of residential real property. This chapter does not apply to the following transfers of residential real property:

- (1) A foreclosure, deed-in-lieu of foreclosure, or a sale by a lienholder who acquired the residential real property through foreclosure or deed-in-lieu of foreclosure;
- (2) A gift or other transfer to a parent, spouse, or child of a transferor or child of any parent or spouse of a transferor;
- (3) A transfer between spouses in connection with a marital dissolution;
- (4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;
- (5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter; and
- (6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy. [1994 c 200 § 2.]

64.06.020 Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement, or unless the transfer is exempt under RCW 64.06.010, deliver to the buyer a completed real property transfer disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA". If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after

mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY THE SELLER(S), CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME THIS DISCLOSURE FORM IS COMPLETED BY THE SELLER. YOU HAVE THREE BUSINESS DAYS, UNLESS OTHERWISE AGREED, FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO RESCIND YOUR AGREEMENT BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF RESCISSION TO THE SELLER, UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT. THE FOLLOWING ARE DISCLOSURES MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN THE BUYER AND THE SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON YOUR BEHALF, FOR EXAMPLE, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, OR PEST AND DRY ROT INSPECTORS. THE PROSPECTIVE BUYER AND THE OWNER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

*If "Yes" attach a copy or explain. If necessary use an attached sheet.

1. TITLE

- []Yes []No []Don't know A. Do you have legal authority to sell the property?
- []Yes []No []Don't know *B. Is title to the property subject to any of the following?
 - (1) First right of refusal
 - (2) Option
 - (3) Lease or rental agreement
 - (4) Life estate?
- []Yes []No []Don't know *C. Are there any encroachments, boundary agreements, or boundary disputes?
- []Yes []No []Don't know *D. Are there any rights of way, easements, or access limitations that may affect the owner's use of the property?

[]Yes []No []Don't know

*E. Are there any written agreements for joint maintenance of an easement or right of way?

[]Don't know

(5) How many bedrooms was the system approved for?

[]Yes []No []Don't know

*F. Is there any study, survey project, or notice that would adversely affect the property?

[]Yes []No []Don't know

..... bedrooms

*E. Do all plumbing fixtures, including laundry drain, go to the septic/sewer system? If no, explain:

[]Yes []No []Don't know

*G. Are there any pending or existing assessments against the property?

[]Yes []No []Don't know

*F. Are you aware of any changes or repairs to the septic system?

[]Yes []No []Don't know

*H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the subject property that would affect future construction or remodeling?

[]Yes []No []Don't know

G. Is the septic tank system, including the drainfield, located entirely within the boundaries of the property?

[]Yes []No []Don't know

*I. Is there a boundary survey for the property?

[]Yes []No []Don't know

4. STRUCTURAL

*A. Has the roof leaked?

If yes, has it been repaired?

[]Yes []No []Don't know

*J. Are there any covenants, conditions, or restrictions which affect the property?

[]Yes []No []Don't know

*B. Have there been any conversions, additions, or remodeling?

*1. If yes, were all building permits obtained?

*2. If yes, were all final inspections obtained?

C. Do you know the age of the house? If yes, year of original construction:

[]Yes []No []Don't know

2. WATER

A. Household Water

(1) The source of the water is []Public []Community []Private []Shared

(2) Water source information:

*a. Are there any written agreements for shared water source?

*b. Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?

*c. Are any known problems or repairs needed?

*d. Does the source provide an adequate year round supply of potable water?

*(3) Are there any water treatment systems for the property? []Leased []Owned

B. Irrigation

(1) Are there any water rights for the property?

*(2) If they exist, to your knowledge, have the water rights been used during the last five-year period?

*(3) If so, is the certificate available?

C. Outdoor Sprinkler System

(1) Is there an outdoor sprinkler system for the property?

*(2) Are there any defects in the outdoor sprinkler system?

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

- Foundations, Chimneys, Doors, Ceilings, Pools, Sidewalks, Garage Floors, Other

- Decks, Interior Walls, Windows, Slab Floors, Hot Tub, Outbuildings, Walkways, Wood Stoves

- Exterior Walls, Fire Alarm, Patio, Driveways, Sauna, Fireplaces

[]Yes []No []Don't know

*F. Was a pest or dry rot, structural or "whole house" inspection done? When and by whom was the inspection completed?

[]Yes []No []Don't know

*G. Since assuming ownership, has your property had a problem with wood destroying organisms and/or have there been any problems with pest control, infestations, or vermin?

3. SEWER/SEPTIC SYSTEM

A. The property is served by: []Public sewer main, []Septic tank system []Other disposal system (describe)

B. If the property is served by a public or community sewer main, is the house connected to the main?

C. Is the property currently subject to a sewer capacity charge?

D. If the property is connected to a septic system:

(1) Was a permit issued for its construction, and was it approved by the city or county following its construction?

(2) When was it last pumped:, 19.....

*(3) Are there any defects in the operation of the septic system?

(4) When was it last inspected?, 19.....

By Whom:

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

[]Yes []No []Don't know

5. SYSTEMS AND FIXTURES

If the following systems or fixtures are included with the transfer, do they have any existing defects:

*A. Electrical system, including wiring, switches, outlets, and service

*B. Plumbing system, including pipes, faucets, fixtures, and toilets

*C. Hot water tank

*D. Garbage disposal

*E. Appliances

*F. Sump pump

*G. Heating and cooling systems

*H. Security system [] Owned [] Leased

*I. Other

6. COMMON INTEREST

A. Is there a Home Owners' Association? Name of Association

B. Are there regular periodic assessments: \$. . . per [] Month [] Year

[] Other

- []Yes []No []Don't know *C. Are there any pending special assessments?
- []Yes []No []Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. GENERAL

- []Yes []No []Don't know *A. Is there any settling, soil, standing water, or drainage problems on the property?
- []Yes []No []Don't know *B. Does the property contain fill material?
- []Yes []No []Don't know *C. Is there any material damage to the property or any of the structure from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
- []Yes []No []Don't know D. Is the property in a designated flood plain?
- []Yes []No []Don't know *E. Are there any substances, materials, or products that may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property?
- []Yes []No []Don't know *F. Are there any tanks or underground storage tanks (e.g., chemical, fuel, etc.) on the property?
- []Yes []No []Don't know *G. Has the property ever been used as an illegal drug manufacturing site?

8. FULL DISCLOSURE BY SELLERS

- []Yes []No []Don't know A. Other conditions or defects:
*Are there any other material defects affecting this property or its value that a prospective buyer should know about?
- B. Verification:
The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

II. BUYER'S ACKNOWLEDGMENT

- A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects which are known to me/us or can be known to me/us by utilizing diligent attention and observation.
- B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only by the seller.
- C. Buyer (which term includes all persons signing the "buyer's acceptance" portion of this disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller's signature.

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF

SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. YOU, THE BUYER, HAVE THREE BUSINESS DAYS, UNLESS OTHERWISE AGREED, FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO RESCIND YOUR AGREEMENT BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF RESCISSION TO THE SELLER UNLESS YOU WAIVE THIS RIGHT OF RESCISSION.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS REAL PROPERTY TRANSFER DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) The real property transfer disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential real property. The real property transfer disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [1996 c 301 § 2; 1994 c 200 § 3.]

Effective date—1996 c 301 § 2: "Section 2 of this act shall take effect July 1, 1996." [1996 c 301 § 7.]

64.06.030 Delivery of disclosure statement—Buyer's options—Time frame. Unless the buyer has expressly waived the right to receive the disclosure statement, not later than five business days or as otherwise agreed to, after mutual acceptance of a written agreement between a buyer and a seller for the purchase and sale of residential real property, the seller shall deliver to the buyer a completed, signed, and dated real property transfer disclosure statement. Within three business days, or as otherwise agreed to, of receipt of the real property transfer disclosure statement, the buyer shall have the right to exercise one of the following two options: (1) Approving and accepting the real property transfer disclosure statement; or (2) rescinding the agreement for the purchase and sale of the property, which decision may be made by the buyer in the buyer's sole discretion. If the buyer elects to rescind the agreement, the buyer must deliver written notice of rescission to the seller within the three-business-day period, or as otherwise agreed to, and upon delivery of the written rescission notice the buyer shall be entitled to immediate return of all deposits and other considerations less any agreed disbursements paid to the seller, or to the seller's agent or an escrow agent for the seller's account, and the agreement for purchase and sale shall be void. If the buyer does not deliver a written rescission notice to [the] seller within the three-business-day period, or as otherwise agreed to, the real property transfer disclosure statement will be deemed approved and accepted by the buyer. [1996 c 301 § 3; 1994 c 200 § 4.]

64.06.040 After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction. (1) If, after the date that a seller of residential real property completes a real property transfer

disclosure statement, the seller becomes aware of additional information, or an adverse change occurs which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored, or the adverse change is corrected, at least three business days prior to the closing date. Unless the corrective action is completed by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Acceptance or rescission shall be subject to the same procedures described in RCW 64.06.030. If the closing date provided in the purchase and sale agreement is scheduled to occur within the three-business-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-business-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three business days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a residential real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a residential real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the earlier of three business days after receipt of the real property transfer disclosure statement or the date the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down payment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate. [1996 c 301 § 4; 1994 c 200 § 5.]

64.06.050 Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability. (1) The seller of residential real property shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. Unless the seller of residential real property has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or

opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

(2) Any licensed real estate salesperson or broker involved in a residential real property transaction is not liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the licensee had no actual knowledge of the error, inaccuracy, or omission. Unless the salesperson or broker has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the salesperson or broker shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor. [1996 c 301 § 5; 1994 c 200 § 6.]

64.06.060 Consumer protection act does not apply. The legislature finds that the practices covered by this chapter are not matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1994 c 200 § 7.]

64.06.070 Buyer's rights or remedies. Except as provided in RCW 64.06.050, nothing in this chapter shall extinguish or impair any rights or remedies of a buyer of real estate against the seller or against any agent acting for the seller otherwise existing pursuant to common law, statute, or contract; nor shall anything in this chapter create any new right or remedy for a buyer of residential real property other than the right of rescission exercised on the basis and within the time limits provided in this chapter. [1996 c 301 § 6; 1994 c 200 § 8.]

64.06.900 Effective date—1994 c 200. This act shall take effect on January 1, 1995. [1994 c 200 § 10.]

Chapter 64.08

ACKNOWLEDGMENTS

Sections

- 64.08.010 Who may take acknowledgments.
- 64.08.020 Acknowledgments out of state—Certificate.
- 64.08.040 Foreign acknowledgments, who may take.
- 64.08.050 Certificate of acknowledgment—Evidence.
- 64.08.060 Form of certificate for individual.
- 64.08.070 Form of certificate for corporation.
- 64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.
- 64.08.100 Acknowledgments by persons unable to sign name.

Validating: See notes following chapter 64.04 RCW digest.

Acknowledgments

merchant seamen: RCW 73.20.010.

persons in the armed services: RCW 73.20.010.

persons outside United States in connection with war: RCW 73.20.010.

64.08.010 Who may take acknowledgments. Acknowledgments of deeds, mortgages and other instruments

in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid. [1971 c 81 § 131; 1931 c 13 § 1; 1929 c 33 § 3; RRS § 10559. Prior: 1913 c 14 § 1; Code 1881 § 2315; 1879 p 110 § 1; 1877 p 317 § 5; 1875 p 107 § 1; 1873 p 466 § 5.]

64.08.020 Acknowledgments out of state—Certificate. Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he represented himself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily believes the signature of the person subscribed to the certificate of acknowledgment to be genuine. [1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317; 1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

64.08.040 Foreign acknowledgments, who may take. Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein and other instruments in writing, required to be acknowledged, may be taken in any foreign country before any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. [1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

64.08.050 Certificate of acknowledgment—Evidence. The officer, or person, taking an acknowledgment as in this chapter provided, shall certify the same by a certificate written upon or annexed to the instrument acknowledged and signed by him or her and sealed with his or her official seal, if any, and reciting in substance that the person, or persons, known to him or her as, or determined by satisfactory evidence to be, the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowledged before him or her on the date stated in the certificate that he, she, or they, executed the same freely and voluntarily. Such certificate shall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment has satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents. [1988 c 69 § 1; 1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

64.08.060 Form of certificate for individual. A certificate of acknowledgment for an individual, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(1), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of }
County of } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this . . . day of, 19. . . (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at, (giving place of residence). [1988 c 69 § 2; 1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

64.08.070 Form of certificate for corporation. A certificate of acknowledgment for a corporation, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(2), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of }
County of } ss.

On this day of , 19. . . , before me personally appeared , to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [1988 c 69 § 3; 1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. The superintendents, associate and assistant superintendents, business managers, records officers and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: PROVIDED, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his name, state in writing his place of residence, the date of his action, and affix the seal of the institution where he is employed: PROVIDED, That in certifying any oath to be used in any of the courts of this state, it shall not be necessary to append an impression of the official seal of the institution. [1972 ex.s. c 58 § 1.]

64.08.100 Acknowledgments by persons unable to sign name. Any person who is otherwise competent but is physically unable to sign his or her name or make a mark may make an acknowledgment authorized under this chapter by orally directing the notary public or other authorized officer taking the acknowledgment to sign the person's name on his or her behalf. In taking an acknowledgment under this section, the notary public or other authorized officer shall, in addition to stating his or her name and place of residence, state that the signature in the acknowledgment was obtained under the authority of this section. [1987 c 76 § 2.]

**Chapter 64.12
WASTE AND TRESPASS**

Sections

- 64.12.010 Waste actionable.
- 64.12.020 Waste by guardian or tenant, action for.
- 64.12.030 Injury to or removing trees, etc.—Damages.
- 64.12.040 Mitigating circumstances—Damages.
- 64.12.045 Cutting, breaking, removing Christmas trees from state lands—Compensation.
- 64.12.050 Injunction to prevent waste on public land.
- 64.12.060 Action by occupant of unsurveyed land.

Actions to be commenced where subject is situated: RCW 4.12.010.

Damages for waste after injunction issued: RCW 7.40.200.

Injunctions, generally: Chapter 7.40 RCW.

Trespass

animals: Title 16 RCW.

criminal: Chapter 9A.52 RCW.

public lands: Chapter 79.40 RCW.

theft: Chapter 9A.56 RCW.

waste, executor or administrator may sue: RCW 11.48.010.

Waste

option contracts and coal leases on state lands: RCW 79.01.696.

restraining during redemption period: RCW 6.23.100.

trespass on state lands: Chapter 79.40 RCW.

64.12.010 Waste actionable. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs. [Code 1881 § 600; 1877 p 125 § 605; 1869 p 143 § 554; 1854 p 206 § 403; RRS § 937.]

64.12.020 Waste by guardian or tenant, action for. If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [1943 c 22 § 1; Code 1881 § 601; 1877 p 125 § 606; 1869 p 143 § 555; 1854 p 206 § 403; Rem. Supp. 1943 § 938.]

64.12.030 Injury to or removing trees, etc.—Damages. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be. [Code

1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

Trespass, public lands: Chapter 79.40 RCW.

64.12.040 Mitigating circumstances—Damages. If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages. [Code 1881 § 603; 1877 p 125 § 608; 1869 p 143 § 557; RRS § 940.]

64.12.045 Cutting, breaking, removing Christmas trees from state lands—Compensation. See RCW 79.40.070.

64.12.050 Injunction to prevent waste on public land. When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [Code 1881 § 604; 1877 p 125 § 609; 1869 p 144 § 558; 1854 p 206 § 404; RRS § 941.]

Injunction, generally: Chapter 7.40 RCW.

64.12.060 Action by occupant of unsurveyed land. Any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed one hundred sixty acres in this territory, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: PROVIDED, ALWAYS, That if any of the aforesaid class of settlers are absent from their claims continuously, for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act. [1883 p 70 § 1; RRS § 942.]

Reviser's note: The preamble and sections 2 and 3 of the 1883 act, section 1 of which is codified above as RCW 64.12.060, read as follows:

Preamble: "WHEREAS, A great many citizens of the United States are now settling upon and cultivating the unsurveyed government lands in this territory; and, as many years may elapse before the government surveys will be extended over the said lands, so that the settlers upon the same, can take them under the laws of the United States, and defend them against the trespass of others, therefore:"

"Sec. 2. Any person or persons, who shall wilfully and maliciously disturb, or in any wise injure, or destroy the dwelling house or other building, or any fence inclosing, or being on the claim of any of the aforesaid class of settlers, shall be deemed guilty of a misdemeanor, and

upon conviction thereof, shall be fined not less than fifty nor more than one hundred (\$100) dollars, for each and every offense, to which may be added imprisonment in the county jail, not exceeding ninety (90) days." [1883 p 71 § 2.]

"Sec. 3. Any person or persons, who shall wilfully or maliciously set fire to any dwelling, or other building, of any of the aforesaid class of settlers, shall be deemed guilty of arson, and subject to the penalties of the law in such cases, made and provided." [1883 p 71 § 3.]

Chapter 64.16 ALIEN LAND LAW

Sections

- 64.16.005 Aliens' rights and interests in lands same as native citizens'.
64.16.140 Certain titles confirmed.

64.16.005 Aliens' rights and interests in lands same as native citizens'. Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise or descent; and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs, and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this state or of the United States. [1967 c 163 § 2.]

1967 c 163 adopted to implement Amendment 42: "This act is adopted by the legislature to implement amendment 42 to the state Constitution approved by the voters of the state on November 8, 1966. Amendment 42 removed constitutional restrictions against alien ownership of land by repealing Article II, section 33 of the state Constitution, as amended and Amendments 24 and 29." [1967 c 163 § 1.]

Severability—1967 c 163: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 163 § 9.]

The above two annotations apply to 1967 c 163. For codification of that act, see Codification Tables, Volume 0.

64.16.140 Certain titles confirmed. All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of this act, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership or attempted ownership, to the extent that title was vested in or conveyed by said alien or aliens: PROVIDED, That nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [1967 c 163 § 3; 1895 c 111 § 1; RRS § 10589.]

Reviser's note: 1967 c 163 carried an emergency clause and was approved by the governor on March 21, 1967.

Chapter 64.20 ALIENATION OF LAND BY INDIANS

Sections

- 64.20.010 Puyallup Indians—Right of alienation.
64.20.025 Puyallup Indians—Right of alienation—When effective.
64.20.030 Sale of land or materials authorized.

Indian graves and records: Chapter 27.44 RCW.

Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.

64.20.010 Puyallup Indians—Right of alienation.

The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed. [1890 p 500 § 1; RRS § 10593.]

Preamble: "WHEREAS, It was and is provided by and in the treaty made with and between the chiefs, head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: 'That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

'WHEREAS, It was and is provided by and in the sixth article of the treaty with the Omahas aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restrictions, but providing that no state legislature shall remove the restrictions* * * without the consent of the Congress;' and

'WHEREAS, The President of the United States, on the 30th day of January, 1866, made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce county, in the State of Washington; and

'WHEREAS, All the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty: now, therefore,"

64.20.025 Puyallup Indians—Right of alienation—When effective. *This act shall take effect and be in force from and after the consent to such removal of the restrictions shall have been given by the congress of the United States. [1890 p 501 § 3; no RRS.]

Reviser's note: *(1) The language "this act" appears in 1890 p 501 § 3, which act is codified herein as RCW 64.20.010 through 64.20.025.

(2) An act of congress of March 3, 1893, removed the restriction on transfer (Wilson Act, 27 Stat. p 633) but postponed the right to transfer for ten years, that is, until March 3, 1903.

64.20.030 Sale of land or materials authorized. Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [1899 c 96 § 1; RRS § 10595.]

Chapter 64.28 JOINT TENANCIES

Sections

- 64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved.
- 64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property.
- 64.28.030 Bank deposits, choses in action, community property agreements not affected.
- 64.28.040 Character of joint tenancy interests held by husband and wife.

64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved. Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law, including the unilateral right of each tenant to sever the joint tenancy. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from husband and wife, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: PROVIDED, That such transfer shall not derogate from the rights of creditors. [1993 c 19 § 1; 1963 ex.s. c 16 § 1; 1961 c 2 § 1 (Initiative Measure No. 208, approved November 8, 1960).]

64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property. (1) Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired by executors or trustees.

(2) Interests in common held in the names of a husband and wife, whether or not in conjunction with others, are presumed to be their community property.

(3) Subsection (2) of this section applies as of June 9, 1988, to all existing or subsequently created interests in common. [1988 c 29 § 10; 1961 c 2 § 2 (Initiative Measure No. 208, approved November 8, 1960).]

64.28.030 Bank deposits, choses in action, community property agreements not affected. The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of husband and wife to make agreements as provided in RCW

26.16.120. [1961 c 2 § 3 (Initiative Measure No. 208, approved November 8, 1960).]

64.28.040 Character of joint tenancy interests held by husband and wife. (1) Joint tenancy interests held in the names of a husband and wife, whether or not in conjunction with others, are presumed to be their community property, the same as other property held in the name of both husband and wife. Any such interest passes to the survivor of the husband and wife as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

(2) Either husband or wife, or both, may sever a joint tenancy. When a joint tenancy is severed, the property, or proceeds of the property, shall be presumed to be their community property, whether it is held in the name of the husband or wife, or both.

(3) This section applies as of January 1, 1985, to all existing or subsequently created joint tenancies. [1993 c 19 § 2; 1985 c 10 § 2. Prior: 1984 c 149 § 174.]

Purpose—1985 c 10: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 10 § 1.]

Severability—1985 c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 10 § 3.]

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005

Chapter 64.32

HORIZONTAL PROPERTY REGIMES ACT (CONDOMINIUMS)

Sections

64.32.010	Definitions.
64.32.020	Application of chapter.
64.32.030	Apartments and common areas declared real property.
64.32.040	Ownership and possession of apartments and common areas.
64.32.050	Common areas and facilities.
64.32.060	Compliance with covenants, bylaws and administrative rules and regulations.
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64.32.130	Mortgages, liens or encumbrances affecting an apartment at time of first conveyance.
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64.32.170	Records and books—Availability for examination—Audits.
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64.32.190	Separate assessments and taxation.
64.32.200	Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.
64.32.210	Conveyance—Liability of grantor and grantee for unpaid common expenses.

64.32.220	Insurance.
64.32.230	Destruction or damage to all or part of property—Disposition.
64.32.240	Actions.
64.32.250	Application of chapter, declaration and bylaws.
64.32.900	Short title.
64.32.910	Construction of term "this chapter."
64.32.920	Severability—1963 c 156.

Condominiums created after July 1, 1990: Chapter 64.34 RCW;

Conversion of apartments into condominiums, notice required: RCW 59.18.200.

Mutual savings banks, powers as to condominiums: RCW 32.04.025.

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

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or spaces located on one or more floors (or part or parts thereof) in a building, or if not in a building, a separately delineated place of storage or moorage of a boat, plane, or motor vehicle, regardless of whether it is destined for a residence, an office, storage or moorage of a boat, plane, or motor vehicle, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed. If the apartment is a separately delineated place of storage or moorage of a boat, plane, or motor vehicle the boundaries are those specified in the declaration. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes:

- (a) The land on which the building is located;
- (b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbys, stairs, stairways, fire escapes, and entrances and exits of the building;
- (c) The basements, yards, gardens, parking areas and storage spaces;
- (d) The premises for the lodging of janitors or persons in charge of the property;
- (e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
- (f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
- (g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Common expenses" include:

- (a) All sums lawfully assessed against the apartment owners by the association of apartment owners;
- (b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;
- (c) Expenses agreed upon as common expenses by the association of apartment owners;
- (d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.

(8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as hereinafter provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, whether or not submerged, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the airspace granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this chapter. [1987 c 383 § 1; 1981 c 304 § 34; 1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

Applicability of RCW 64.32.010(1) to houseboat moorages: "The provisions of section 34 (1) shall not apply to moorages for houseboats without the approval of the local municipality." [1981 c 304 § 35.]

Severability—1981 c 304: See note following RCW 26.16.030.

64.32.020 Application of chapter. This chapter shall be applicable only to property, the sole owner or all of the owners, lessees or possessors of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided. [1963 c 156 § 2.]

64.32.030 Apartments and common areas declared real property. Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property. [1963 c 156 § 3.]

64.32.040 Ownership and possession of apartments and common areas. Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment but any apartment may be jointly or commonly owned by more than one person. Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities. [1963 c 156 § 4.]

64.32.050 Common areas and facilities. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of

this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments. [1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

64.32.060 Compliance with covenants, bylaws and administrative rules and regulations. Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner. [1963 c 156 § 6.]

64.32.070 Liens or encumbrances—Enforcement—Satisfaction. (1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: PROVIDED, That no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed

to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged. [1963 c 156 § 7.]

64.32.080 Common profits and expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. [1963 c 156 § 8.]

64.32.090 Contents of declaration. The declaration shall contain the following:

(1) A description of the land on which the building and improvement are or are to be located;

(2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;

(3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;

(4) A description of the common areas and facilities;

(5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;

(7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;

(9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;

(10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or

apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: PROVIDED, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners. [1963 c 156 § 9.]

64.32.100 Copy of survey map, building plans to be filed—Contents of plans. Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

(1) The vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate such boundaries relative to the survey map of the surface of the land by the use of standard survey methods;

(2) The number of the apartment and its dimensions;

(3) The approximate square footage of each unit;

(4) The number of bathrooms, whole or partial;

(5) The number of rooms to be used primarily as bedrooms;

(6) The number of built-in fireplaces;

(7) A statement of any scenic view which might affect the value of the apartment; and

(8) The initial value of the apartment relative to the other apartments in the building.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county

auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor. [1987 c 383 § 2; 1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

Fees for filing condominium surveys, maps, or plats: RCW 58.24.070.

64.32.110 Ordinances, resolutions, or zoning laws—Construction. Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments. [1963 c 156 § 11.]

64.32.120 Contents of deeds or other conveyances of apartments. Deeds or other conveyances of apartments shall include the following:

(1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration;

(2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(3) A statement of the use for which the apartment is intended;

(4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;

(5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter. [1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance. At the time of the first conveyance of each apartment, every mortgage, lien, or other encumbrance affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded. [1963 c 156 § 13.]

64.32.140 Recording. The declaration, any amendment thereto, any instrument by which the property may be removed from this chapter and every instrument affecting the property or any apartment shall be entitled to be recorded in the office of the auditor of the county in which the property is located. Neither the declaration nor any amendment thereof shall be valid unless duly recorded. [1963 c 156 § 14.]

64.32.150 Removal of property from provisions of chapter. (1) All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect duly recorded: PROVIDED, That the mortgagees and holders of all liens affecting any of the apartments consent thereto or agree, in either case by instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided;

(2) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owners in the common areas and facilities. [1963 c 156 § 15.]

64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission. The removal provided for in RCW 64.32.150 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [1963 c 156 § 16.]

64.32.170 Records and books—Availability for examination—Audits. The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization. [1965 ex.s. c 11 § 5; 1963 c 156 § 17.]

64.32.180 Exemption from liability for contribution for common expenses prohibited. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment. [1963 c 156 § 18.]

64.32.190 Separate assessments and taxation. Each apartment and its undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel for any purpose. [1963 c 156 § 19.]

64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser. (1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may

be enforced in any manner provided in the declaration including but not limited to (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage, such possessor, his successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his successors and assigns. [1988 c 192 § 2; 1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [1963 c 156 § 21.]

64.32.220 Insurance. The manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or at the request of a mortgagee having a mortgage of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment and/or the personal contents thereof for his benefit. [1963 c 156 § 22.]

64.32.230 Destruction or damage to all or part of property—Disposition. If, within ninety days of the date of damage or destruction to all or part of the property it is not determined by the apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event:

(1) The property shall be owned in common by the apartment owners;

(2) The undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any mortgages or liens affecting any of the apartments shall be deemed transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(4) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each apartment owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each apartment owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such apartment owner, the balance remaining in each share shall then be distributed to each apartment owner respectively. [1965 ex.s. c 11 § 7; 1963 c 156 § 23.]

64.32.240 Actions. Without limiting the rights of any apartment owner, actions may be brought as provided by law and by the rules of court by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process. Actions relating to the common areas and

facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and any judgment lien or other charge resulting therefrom shall be deemed a common expense, which judgment lien or other charge shall be removed from any apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his proportionate share thereof based on the percentage of undivided interest owned by such apartment owner. [1963 c 156 § 24.]

64.32.250 Application of chapter, declaration and bylaws. (1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners. [1963 c 156 § 25.]

64.32.900 Short title. This chapter shall be known as the horizontal property regimes act. [1963 c 156 § 26.]

64.32.910 Construction of term "this chapter." The term "this chapter" means RCW 64.32.010 through 64.32.250 and 64.32.900 through 64.32.920, and as they may hereafter be amended or supplemented by subsequent legislation. [1963 c 156 § 27.]

64.32.920 Severability—1963 c 156. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1963 c 156 § 28.]

**Chapter 64.34
CONDOMINIUM ACT**

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ARTICLE 1 GENERAL PROVISIONS

64.34.010 Applicability. (1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.212 (description of units), RCW 64.34.304(1)(a) through (f) and (k) through (r) (powers of unit owners' association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium. [1993 c 429 § 12; 1992 c 220 § 1; 1989 c 43 § 1-102.]

64.34.020 Definitions. In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person: (a) Is a general partner, officer, director, or employer of the declarant; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the declarant; (c) controls in any manner the election of a majority of the directors of the declarant; or (d) has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subten-

ant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(11) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(12) "Dealer" means a person who owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(13) "Declarant" means any person or group of persons acting in concert who (a) executes as declarant a declaration as defined in subsection (15) of this section, or (b) reserves or succeeds to any special declarant right under the declaration.

(14) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (4) or (5).

(15) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(16) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(17) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(18) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(19) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(20) "Identifying number" means the designation of each unit in a condominium.

(21) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(22) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(23) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(24) "Mortgage" means a mortgage, deed of trust or real estate contract.

(25) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(26) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(27) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(28) "Residential purposes" means use for dwelling or recreational purposes, or both.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(4).

(30) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(31) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(32) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract. [1992 c 220 § 2; 1990 c 166 § 1; 1989 c 43 § 1-103.]

Effective date—1990 c 166: "This act shall take effect July 1, 1990." [1990 c 166 § 16.]

64.34.030 Variation by agreement. Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration. [1989 c 43 § 1-104.]

64.34.040 Separate interests—Taxation. (1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.

(3) If a development right has an ascertainable market value, the development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed to the declarant.

(4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law. [1992 c 220 § 3; 1989 c 43 § 1-105.]

64.34.050 Local ordinances, regulations, and building codes—Applicability. (1) A zoning, subdivision, building code, or other real property law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

(2) This section shall not prohibit a county legislative authority from requiring the review and approval of declarations and amendments thereto and termination agreements executed pursuant to RCW 64.34.268(2) by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor shall be done in a reasonable and timely manner. [1989 c 43 § 1-106.]

64.34.060 Condemnation. (1) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant of a unit which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the

unit owner for the owner's unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (b) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by condemnation the portion of the award attributable to the common elements taken shall be paid to the owners based on their respective interests in the common elements unless the declaration provides otherwise. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court judgment shall be recorded in every county in which any portion of the condominium is located.

(5) Should the association not act, based on a right reserved to the association in the declaration, on the owners' behalf in a condemnation process, the affected owners may individually or jointly act on their own behalf. [1989 c 43 § 1-107.]

64.34.070 Law applicable—General principles. The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, condemnation, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter. [1989 c 43 § 1-108.]

64.34.080 Contracts—Unconscionability. (1) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the real property and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable. [1989 c 43 § 1-111.]

64.34.090 Obligation of good faith. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [1989 c 43 § 1-112.]

64.34.100 Remedies liberally administered. (1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Any right or obligation declared by this chapter is enforceable by judicial proceeding. [1989 c 43 § 1-113.]

ARTICLE 2 CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

64.34.200 Creation of condominium. (1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to RCW 64.34.232. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless (a) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed as evidenced by a recorded certificate of completion executed by the declarant which certificate may be included in the declaration or the amendment, the survey map and plans to be recorded pursuant to RCW 64.34.232, or a separately recorded written instrument,

and (b) all horizontal and vertical boundaries of such units are substantially completed in accordance with the plans required to be recorded by RCW 64.34.232, as evidenced by a recorded certificate of completion executed by a licensed surveyor. [1992 c 220 § 4; 1990 c 166 § 2; 1989 c 43 § 2-101.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.202 Reservation of condominium name. Upon the filing of a written request with the county office in which the declaration is to be recorded, using such form of written request as may be required by the county office and paying such fee as the county office may establish not in excess of fifty dollars, a person may reserve the exclusive right to use a particular name for a condominium to be created in that county. The name being reserved shall not be identical to any other condominium or subdivision plat located in that county, and such name reservation shall automatically lapse unless within three hundred sixty-five days from the date on which the name reservation is filed the person reserving that name either records a declaration using the reserved name or files a new name reservation request. [1992 c 220 § 5.]

64.34.204 Unit boundaries. Except as provided by the declaration:

(1) The walls, floors, or ceilings are the boundaries of a unit, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. [1992 c 220 § 6; 1989 c 43 § 2-102.]

64.34.208 Declaration and bylaws—Construction and validity. (1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(1)(a).

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter. [1989 c 43 § 2-103.]

64.34.212 Description of units. A description of a unit which sets forth the name of the condominium, the recording number for the declaration, the county in which the condominium is located, and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. [1989 c 43 § 2-104.]

64.34.216 Contents of declaration. (1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and, if the declarant has reserved the right to create additional units, the number of such additional units;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in RCW 64.34.204(1);

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces; and

(v) The level or levels on which each unit is located.

The data described in (ii), (iii), and (iv) of this subsection (1)(e) may be omitted with respect to units restricted to nonresidential use;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in RCW 64.34.204 (2) and (4), as provided in RCW 64.34.232(2)(j);

(i) A description of any real property which may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in RCW 64.34.204 (2) and (4), together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in RCW 64.34.224;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by RCW 64.34.220 through 64.34.232, 64.34.256, 64.34.260, 64.34.276, and 64.34.308(4).

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by recording number to the survey map and plans relating to the added units and set forth all information required by RCW 64.34.216(1) with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate. [1992 c 220 § 7; 1989 c 43 § 2-105.]

64.34.220 Leasehold condominiums. (1) Any lease, the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(a) The recording number of the lease or a statement of where the complete lease may be inspected;

(b) The date on which the lease is scheduled to expire;

(c) A legal description of the real property subject to the lease;

(d) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(2) The declaration may provide for the collection by the association of the proportionate rents paid on the lease by the unit owners and may designate the association as the representative of the unit owners on all matters relating to the lease.

(3) If the declaration does not provide for the collection of rents by the association, the lessor may not terminate the

interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants other than the payment of rent which, if violated, would entitle the lessor to terminate the lease.

(4) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired and the owner thereof records a document confirming the merger.

(5) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with RCW 64.34.060(1) as though those units had been taken by condemnation. Reallocations shall be confirmed by an amendment to the declaration and survey map and plans prepared, executed, and recorded by the association. [1989 c 43 § 2-106.]

64.34.224 Common element interests, votes, and expenses—Allocation. (1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas or methods used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas or methods to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide: (a) For cumulative voting only for the purpose of electing members of the board of directors; and (b) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(4) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(5) Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. [1992 c 220 § 8; 1989 c 43 § 2-107.]

64.34.228 Limited common elements. (1) Except for the limited common elements described in RCW 64.34.204 (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated.

(2) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the declaration, a limited common element may only be reallocated between units with the approval of the board of directors and by an amendment to the declaration executed by the owners of the units to which the limited common element was and will be allocated. The board of directors shall approve the request of the owner or owners under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the condominium.

(3) Unless otherwise provided in the declaration, the owners of units to which at least sixty-seven percent of the votes are allocated, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans. [1992 c 220 § 9; 1989 c 43 § 2-108.]

64.34.232 Survey maps and plans. (1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans filed shall be in such style, size, form and quality as shall be prescribed by the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled "SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION"; any land that may be added to the condominium shall also be labeled "MAY BE ADDED TO THE CONDOMINIUM"; any land that may be withdrawn from the condominium shall also be labeled "MAY BE WITHDRAWN FROM THE CONDOMINIUM";

(d) The extent of any encroachments by or upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) Subject to the provisions of subsection (8) of this section, the location and dimensions of any vertical unit

boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement under RCW 64.34.410(1)(j) and any limited common elements, including limited common element porches, balconies, patios, parking spaces, and storage facilities, but not including the other limited common elements described in RCW 64.34.204 (2) and (4);

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) Subject to the provisions of subsection (8) of this section, the location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under RCW 64.34.236(3), identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor.

(8) In showing or projecting the location and dimensions of the vertical boundaries of a unit under subsections (2)(f) and (4)(a) of this section, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from adjacent vertical boundaries of other units if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the survey map under subsection (2)(b) of this section; and (c) the graphic general location of the vertical bound-

aries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building. [1997 c 400 § 2; 1992 c 220 § 10; 1989 c 43 § 2-109.]

64.34.236 Development rights. (1) To exercise any development right reserved under RCW 64.34.216(1)(j), the declarant shall prepare, execute, and record an amendment to the declaration under RCW 64.34.264, and comply with RCW 64.34.232. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (2) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by RCW 64.34.228.

(2) Development rights may be reserved within any real property added to the condominium if the amendment adding that real property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the survey map and plans include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to RCW 64.34.216(1)(j).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by condemnation under RCW 64.34.060.

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable and equitable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to RCW 64.34.216(1)(j), that all or a portion of the real property is subject to the development right of withdrawal:

(a) If all the real property is subject to withdrawal, and the declaration or survey map or amendment thereto does not describe separate portions of real property subject to that right, none of the real property may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant; and

(b) If a portion or portions are subject to withdrawal as described in the declaration or in the survey map or in any amendment thereto, no portion may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant. [1989 c 43 § 2-110.]

64.34.240 Alterations of units. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to the owner's unit that do not affect the structural integrity or

mechanical or electrical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements or the exterior appearance of a unit without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit may, with approval of the board of directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. The board of directors shall approve a unit owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed alteration does not comply with this chapter or the declaration or impairs the structural integrity or mechanical or electrical systems in the condominium. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. [1989 c 43 § 2-111.]

64.34.244 Relocation of boundaries—Adjoining

units. (1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may only be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board of directors determines within thirty days, or such other period provided in the declaration, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee.

(2) The association shall obtain and record survey maps or plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers. [1989 c 43 § 2-112.]

64.34.248 Subdivision of units. (1) If the declaration permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including survey maps and plans, subdividing that unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable and equitable manner prescribed by the owner of the subdivided unit. [1989 c 43 § 2-113.]

64.34.252 Monuments as boundaries. The physical boundaries of a unit constructed in substantial accordance with the original survey map and set of plans thereof become its boundaries rather than the metes and bounds expressed in the survey map or plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the survey map or plans and those of the building. This section does not relieve a declarant or any other person of liability for failure to adhere to the survey map and plans. [1989 c 43 § 2-114.]

64.34.256 Use by declarant. A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element and, if a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances. [1992 c 220 § 11; 1989 c 43 § 2-115.]

64.34.260 Easement rights—Common elements. Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration. [1989 c 43 § 2-116.]

64.34.264 Amendment of declaration. (1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant. [1989 c 43 § 2-117.]

64.34.268 Termination of condominium. (1) Except in the case of a taking of all the units by condemnation under RCW 64.34.060, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof

distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any lien holder.

(7) The respective interests of unit owners referred to in subsections (4), (5), and (6) of this section are as follows:

(a) Except as provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved, within thirty days after distribution, by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that

portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has not been partially released as to a unit, the purchaser at the foreclosure or such purchaser's successors may, upon foreclosure, record an instrument exercising the right to withdraw the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs. [1992 c 220 § 12; 1989 c 43 § 2-118.]

64.34.272 Rights of secured lenders. The declaration may require that all or a specified number or percentage of the holders of mortgages encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors, or (2) prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to RCW 64.34.352. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to units with respect to which eligible mortgagees have an interest. [1989 c 43 § 2-119.]

64.34.276 Master associations. (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in RCW 64.34.300, it may exercise the powers set forth in RCW 64.34.304(1)(b) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or

expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.308, 64.34.332, 64.34.336, 64.34.340, and 64.34.348 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in RCW 64.34.300, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, must provide that the board of directors of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that board of directors.

(b) All members of the boards of directors of all condominiums subject to the master association may elect all members of that board of directors.

(c) All unit owners of each condominium subject to the master association may elect specified members of that board of directors.

(d) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors. [1989 c 43 § 2-120.]

64.34.278 Delegation of power to subassociations.

(1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of unit owners owning less than all of the units in a condominium, and where those unit owners share the exclusive use of one or more limited common elements within the condominium or share some property or other interest in the condominium in common that is not shared by the remainder of the unit owners in the condominium, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section. The delegation of powers to a subassociation shall not be used to discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) A subassociation may exercise the powers set forth in RCW 64.34.304(1) only to the extent expressly permitted by the declaration of the condominium of which the units in the subassociation are a part of or expressly described in the delegations of power from that condominium to the subassociation.

(3) If the declaration of any condominium contains a delegation of certain powers to a subassociation, or provides that the board of directors of the condominium may make such a delegation, the members of the board of directors have no liability for the acts or omissions of the subassociation with respect to those powers so exercised by the subassociation following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.300 through 64.34.376 apply to the conduct of the affairs of a subassociation.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends, the board of directors of the subassociation shall be elected after the period of declarant control by the unit owners of all of the units in the condominium subject to the subassociation.

(6) The declaration of the condominium creating the subassociation may provide that the authority of the board of directors of the subassociation is exclusive with regard to the powers and responsibilities delegated to it. In the alternative, the declaration may provide as to some or all such powers that the authority of the board of directors of a subassociation is concurrent with and subject to the authority of the board of directors of the unit owners' association, in which case the declaration shall also contain standards and procedures for the review of the decisions of the board of directors of the subassociation and procedures for resolving any dispute between the board of the unit owners' association and the board of the subassociation. [1992 c 220 § 13.]

64.34.280 Merger or consolidation. (1) Any two or more condominiums, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating the portion of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the

preexisting condominiums, and providing that the percentages allocated to each unit formerly comprising a part of the preexisting condominium in such portion must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

(4) All merged or consolidated condominiums under this section shall comply with this chapter. [1989 c 43 § 2-121.]

ARTICLE 3 MANAGEMENT OF CONDOMINIUM

64.34.300 Unit owners' association—Organization.

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control. [1992 c 220 § 14; 1989 c 43 § 3-101.]

64.34.304 Unit owners' association—Powers. (1)

Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;
- (k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the board of

directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;

(l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.425, and statements of unpaid assessments;

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;

(o) Join in a petition for the establishment of a parking and business improvement area, participate in the rate payers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;

(p) Exercise any other powers conferred by the declaration or bylaws;

(q) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(r) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons. [1993 c 429 § 11; 1990 c 166 § 3; 1989 c 43 § 3-102.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.308 Board of directors and officers. (1)

Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (6) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4)(a) Subject to subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection (4)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(5) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(6) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(7) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners. [1992 c 220 § 15; 1989 c 43 § 3-103.]

64.34.312 Control of association—Transfer. (1) Within sixty days after the termination of the period of declarant control provided in RCW 64.34.308(4) or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

- (a) The original or a photocopy of the recorded declaration and each amendment to the declaration;
- (b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;
- (c) The bylaws of the association;
- (d) The minute books, including all minutes, and other books and records of the association;
- (e) Any rules and regulations that have been adopted;
- (f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;
- (g) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;
- (h) Association funds or the control of the funds of the association;
- (i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;
- (j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized by the declarant in the construction or remodeling of the condominium;
- (k) Insurance policies or copies thereof for the condominium and association;
- (l) Copies of any certificates of occupancy that may have been issued for the condominium;
- (m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;
- (n) All written warranties that are still in effect for the common elements, or any other areas or facilities which the

association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Any leases of the common elements or areas and other leases to which the association is a party;

(q) Any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; and

(r) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments. [1989 c 43 § 3-104.]

64.34.316 Special declarant rights—Transfer. (1) No special declarant right, as described in RCW 64.34.020(29), created or reserved under this chapter may be transferred except by an instrument evidencing the transfer executed by the declarant or the declarant's successor and the transferee is recorded in every county in which any portion of the condominium is located. Each unit owner shall receive a copy of the recorded instrument, but the failure to furnish the copy shall not invalidate the transfer.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant as described in RCW 64.34.020(1), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this

chapter or by the declaration relating to the retained special declarant rights arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) In case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold succeeds to all special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to RCW 64.34.256 and held by that declarant to maintain models, sales offices, and signs, unless such person requests that all or any of such rights not be transferred. The instrument conveying title shall describe any special declarant rights not being transferred.

(4) Upon foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control as described in RCW 64.34.308(4) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(b) A successor to any special declarant right, other than a successor described in (c) or (d) of this subsection, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to such successor's exercise or nonexercise of special declarant rights; or

(ii) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board of directors; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs as described in RCW 64.34.256, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof;

(d) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a

foreclosure, a deed in lieu of foreclosure, or a judgment or instrument conveying title to units under subsection (3) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the board of directors in accordance with the provisions of RCW 64.34.308(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under RCW 64.34.308(4);

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration. [1989 c 43 § 3-105.]

64.34.320 Contracts and leases—Declarant—Termination. If entered into before the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real property subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. [1989 c 43 § 3-106.]

64.34.324 Bylaws. (1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(e) The method of amending the bylaws.

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) In determining the qualifications of any officer or director of the association, notwithstanding the provision of RCW 64.34.020(32) the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person. [1992 c 220 § 16; 1989 c 43 § 3-107.]

64.34.328 Upkeep of condominium. (1) Except to the extent provided by the declaration, subsection (2) of this section, or RCW 64.34.352(7), the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, shall be liable for the repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real property subject to development rights except that the declaration may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use shall be paid by the association as a common expense. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real property subject to development rights inures to the declarant. [1989 c 43 § 3-108.]

64.34.332 Meetings. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer. [1989 c 43 § 3-109.]

64.34.336 Quorums. (1) Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on the board of directors are present at the beginning of the meeting. [1989 c 43 § 3-110.]

64.34.340 Voting—Proxies. (1) If only one of the multiple owners of a unit is present at a meeting of the association or has delivered a written ballot or proxy to the association secretary, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present or has delivered a written ballot or proxy to the association secretary, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (a) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners; (b) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in RCW 64.34.332, of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association shall be disregarded. [1992 c 220 § 17; 1989 c 43 § 3-111.]

64.34.344 Tort and contract liability. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner or any officer or director of the

association. Unless the wrong was done by a unit owner other than the declarant, if the wrong by the association occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission by the association. If the declarant does not defend the action and is determined to be liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association in such defense. Any statute of limitations affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by RCW 64.34.368. [1989 c 43 § 3-112.]

64.34.348 Common elements—Conveyance—Encumbrance. (1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a security interest by the association if the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances. [1989 c 43 § 3-113.]

64.34.352 Insurance. (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, or is modified, canceled, or not renewed, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under RCW 64.34.060(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use. [1992 c 220 § 18; 1990 c 166 § 4; 1989 c 43 § 3-114.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.354 Insurance—Conveyance. Promptly upon the conveyance of a unit, the new unit owner shall notify the association of the date of the conveyance and the unit owner's name and address. The association shall notify each insurance company that has issued an insurance policy to the association for the benefit of the owners under RCW 64.34.352 of the name and address of the new owner and request that the new owner be made a named insured under such policy. [1990 c 166 § 8.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.356 Surplus funds. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall, in the discretion of the board of directors, either be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. [1989 c 43 § 3-115.]

64.34.360 Common expenses—Assessments. (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. [1990 c 166 § 5; 1989 c 43 § 3-116.]

Effective date—1990 c 166: See note following RCW 64.34.020

64.34.364 Lien for assessments. (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency.

cy to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary convey-

ance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law. [1990 c 166 § 6; 1989 c 43 § 3-117.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.368 Liens—General provisions. (1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to RCW 64.34.348, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's allocated

common expense liability bears to the allocated common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association shall be filed in the name of the condominium and the association and, when so filed, is notice of the lien against the units. [1989 c 43 § 3-118.]

64.34.372 Association records—Funds. (1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records of the association, including but not limited to checks, bank records, and invoices, are the property of the association, but shall be made reasonably available for examination and copying by the manager of the association, any unit owner, or the owner's authorized agents. At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accordance with generally accepted accounting principles. The financial statements of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association. [1992 c 220 § 19; 1990 c 166 § 7; 1989 c 43 § 3-119.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.376 Association as trustee. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [1989 c 43 § 3-120.]

ARTICLE 4 PROTECTION OF CONDOMINIUM PURCHASERS

64.34.400 Applicability—Waiver. (1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent

otherwise agreed to in writing by the seller and purchasers of those units that are restricted to nonresidential use in the declaration.

(2) This article shall not apply in the case of:

(a) A conveyance by gift, devise, or descent;

(b) A conveyance pursuant to court order;

(c) A disposition by a government or governmental agency;

(d) A conveyance by foreclosure;

(e) A disposition of all of the units in a condominium in a single transaction;

(f) A disposition to other than a purchaser as defined in RCW 64.34.020(26); or

(g) A disposition that may be canceled at any time and for any reason by the purchaser without penalty. [1992 c 220 § 20; 1990 c 166 § 9; 1989 c 43 § 4-101.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.405 Public offering statement—Requirements—Liability. (1) Except as provided in subsection (2) of this section or when no public offering statement is required, a declarant shall prepare a public offering statement conforming to the requirements of RCW 64.34.410 and 64.34.415.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to RCW 64.34.316 or to a dealer who intends to offer units in the condominium for the person's own account.

(3) Any declarant or dealer who offers a unit for the person's own account to a purchaser shall deliver a public offering statement in the manner prescribed in RCW 64.34.420(1). Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The declarant or dealer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a condominium and is part of another real property regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement, conforming to the requirements of RCW 64.34.410 and 64.34.415 as those requirements relate to all real property regimes in which the unit is located and conforming to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements. [1989 c 43 § 4-102.]

64.34.410 Public offering statement—General provisions. (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;
- (f) The nature of the interest being offered for sale;
- (g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;
- (h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;
- (i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;
- (j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;
- (k) A list of the limited common elements assigned to the units being offered for sale;
- (l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;
- (m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;
- (n) The status of construction of the units and common elements, including estimated dates of completion if not completed;
- (o) The estimated current common expense liability for the units being offered;
- (p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;
- (q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;
- (r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;
- (s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;
- (t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;
- (u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;
- (v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate,

and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(10);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering state-

ment, all of which may be included or not included at the option of the declarant; and

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, and the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), and (ii) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

64.34.415 Public offering statement—Conversion condominiums. (1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410:

(a) Either a copy of a report prepared by an independent, licensed architect or engineer, or a statement by the declarant based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(c) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use. [1992 c 220 § 22; 1990 c 166 § 10; 1989 c 43 § 4-104.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.417 Public offering statement—Use of single disclosure document. If a unit is offered for sale for which the delivery of a public offering statement or other disclosure document is required under the laws of any state or the United States, a single disclosure document conforming to the requirements of RCW 64.34.410 and 64.34.415 and conforming to any other requirement imposed under such laws, may be prepared and delivered in lieu of providing two or more disclosure documents. [1990 c 166 § 11.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.418 Public offering statement—Contract of sale—Restriction on interest conveyed. In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until (1) the declaration and survey map and plans which create the condominium in which that unit is located are recorded pursuant to RCW 64.34.200 and 64.34.232 and (2) the unit is substantially completed and available for occupancy, unless the declarant and purchaser have otherwise specifically agreed in writing as to the extent to which the unit will not be substantially completed and available for occupancy at the time of conveyance. [1990 c 166 § 15.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.420 Purchaser's right to cancel. (1) A person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall provide a purchaser of a unit with a copy of the public offering statement and all material amendments thereto before conveyance of that unit. Unless a purchaser is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than seven days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1) of this section, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all material amendments thereto as required by subsection (1) of this section, the purchaser is entitled to receive from that person an amount equal to the greater of (a) actual damages, or (b) ten percent of the sales price of the unit for a willful failure by the declarant or three percent of the sales price of the unit for any other failure. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser

under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase. [1989 c 43 § 4-106.]

64.34.425 Resale of unit. (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year.

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the

limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof; and

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association.

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(1), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed one hundred fifty dollars. The association may charge a unit owner a nominal fee for updating a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first. [1992 c 220 § 23; 1990 c 166 § 12; 1989 c 43 § 4-107.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.430 Escrow of deposits. Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company, an attorney, a real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; (3) refunded to the purchaser; or (4) delivered to a court in connection with the filing of an interpleader action. [1992 c 220 § 24; 1989 c 43 § 4-108.]

64.34.435 Release of liens—Conveyance. (1) At the time of the first conveyance of each unit, every mortgage, lien, or other encumbrance affecting that unit and any other unit or units or real property, other than the percentage of

undivided interest of that unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its undivided interest in the common elements shall be released therefrom by partial release duly recorded or the purchaser of that unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance. This subsection does not apply to any real property which a declarant has the right to withdraw.

(2) Before conveying real property to the association the declarant shall have that real property released from: (a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and (b) all other liens on that real property unless the public offering statement describes certain real property which may be conveyed subject to liens in specified amounts. [1989 c 43 § 4-109.]

64.34.440 Conversion condominiums—Notice—Tenants. (1) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than ninety days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be delivered pursuant to notice requirements set forth in RCW 59.12.040. No tenant or subtenant may be required to vacate upon less than ninety days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period. Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying

the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and

such city or county as to the location of such account and any disbursements therefrom; and

(e) Relocation assistance not to exceed five hundred dollars per unit shall be paid to tenants and subtenants who elect not to purchase a unit and who are in lawful occupancy for residential purposes of a unit and whose monthly household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of (i) the monthly median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located, or (ii) if the condominium is not within a standard metropolitan statistical area, the monthly median income for comparably sized households in the state of Washington, as defined and determined by said department. The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein. [1992 c 220 § 25; 1990 c 166 § 13; 1989 c 43 § 4-110.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.443 Express warranties of quality. (1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to *RCW 64.34.410(1)(v);

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are

necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers. [1989 c 428 § 2.]

***Reviser's note:** RCW 64.34.410 was amended by 1997 c 400 § 1, changing subsection (1)(v) to subsection (1)(w).

Captions—1989 c 428: "Section captions as used in this act do not constitute any part of the law." [1989 c 428 § 6.]

Effective date—1989 c 428: "Sections 1 through 4 of this act shall take effect July 1, 1990." [1989 c 428 § 7.]

***Reviser's note:** Sections 1, 3, and 4 of this act were vetoed by the governor.

64.34.445 Implied warranties of quality. (1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials; and

(b) Constructed in accordance with sound engineering and construction standards, and in a workmanlike manner in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality. [1992 c 220 § 26; 1989 c 43 § 4-112.]

64.34.450 Implied warranties of quality—Exclusion—Modification. (1) Except as limited by subsection (2) of this section, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any

dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain. [1989 c 43 § 4-113.]

64.34.452 Warranties of quality—Breach. (1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443 and 64.34.445 must be commenced within four years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.34.308(4). Such period may not be reduced by either oral or written agreement.

(2) Subject to subsection (3) of this section, a cause of action or breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier. [1990 c 166 § 14.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.455 Effect of violations on rights of action—Attorney's fees. If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party. [1989 c 43 § 4-115.]

64.34.460 Labeling of promotional material. If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a survey map or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT." [1989 c 43 § 4-116.]

64.34.465 Improvements—Declarant's duties. (1) The declarant shall complete all improvements labeled

"MUST BE BUILT" on survey maps or plans prepared pursuant to RCW 64.34.232.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created by RCW 64.34.236, 64.34.240, 64.34.244, 64.34.248, 64.34.256, and 64.34.260. [1989 c 43 § 4-117.]

ARTICLE 5
MISCELLANEOUS

64.34.900 Short title. This chapter shall be known and may be cited as the Washington condominium act or the condominium act. [1989 c 43 § 1-101.]

64.34.910 Section captions. Section captions as used in this chapter do not constitute any part of the law. [1989 c 43 § 4-119.]

64.34.920 Severability—1989 c 43. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 43 § 4-120.]

64.34.930 Effective date—1989 c 43. This act shall take effect July 1, 1990. [1989 c 43 § 4-124.]

64.34.940 Construction against implicit repeal. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [1989 c 43 § 1-109.]

64.34.950 Uniformity of application and construction. This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1989 c 43 § 1-110.]

Chapter 64.36
TIMESHARE REGULATION

Sections	
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- 64.36.901 Severability—1983 1st ex.s. c 22.

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

(1) "Advertisement" means any written, printed, audio, or visual communication which is published in whole or part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate of a promoter" means any person who controls, is controlled by, or is under the control of a promoter.

(3) "Commercial promotional programs" mean packaging or putting together advertising or promotional materials involving promises of gifts, prizes, awards, or other items of value to solicit prospective purchasers to purchase a product or commodity.

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

(5) "Interval" means that period of time when a timeshare owner is entitled to the possession and use of the timeshare unit.

(6) "Offer" means any inducement, solicitation, or attempt to encourage any person to acquire a timeshare.

(7) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(8) "Promoter" means any person directly or indirectly instrumental in organizing, wholly or in part, a timeshare offering.

(9) "Purchaser" means any person, other than a promoter, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a timeshare for value.

(11) "Timeshare" means a right to occupy a unit or any of several units during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with an estate in land.

(12) "Timeshare expenses" means expenditures, fees, charges, or liabilities: (a) Incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and (b) imposed on the timeshare units by the entity governing a project of which the timeshare property is a part, together with any allocations to reserves but excluding purchase money payable for timeshares.

(13) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(14) "Timeshare owner" means a person who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, "timeshare owner" means the beneficiary of the trust.

(15) "Timeshare salesperson" means any natural person who offers a timeshare unit for sale.

(16) "Unit" means the real or personal property, or portion thereof, in which the timeshare exists and which is designated for separate use. [1987 c 370 § 1; 1985 c 358 § 1; 1983 1st ex.s. c 22 § 1.]

64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized. (1) A timeshare offering registration must be effective before any advertisement, solicitation of an offer, or any offer or sale of a timeshare may be made in this state.

(2) An applicant shall apply for registration by filing with the director:

(a) A copy of the disclosure document prepared in accordance with RCW 64.36.140 and signed by the applicant;

(b) An application for registration prepared in accordance with RCW 64.36.030;

(c) An irrevocable consent to service of process signed by the applicant;

(d) The prescribed registration fee; and

(e) Any other information the director may by rule require in the protection of the public interest.

(3) The registration requirements do not apply to:

- (a) An offer, sale, or transfer of not more than one timeshare in any twelve-month period;
 - (b) A gratuitous transfer of a timeshare;
 - (c) A sale under court order;
 - (d) A sale by a government or governmental agency;
 - (e) A sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or
 - (f) A sale of a timeshare property or all timeshare units therein to any one purchaser.
- (4) The director may by rule or order exempt any potential registrant from the requirements of this chapter if the director finds registration is unnecessary for the protection of the public interest. [1983 1st ex.s. c 22 § 2.]

64.36.030 Application for registration—Contents.

The application for registration signed by the promoter shall contain the following information on a form prescribed by the director:

- (1) The following financial statements showing the financial condition of the promoter and any affiliate:
 - (a) A balance sheet as of a date within four months before the filing of the application for registration; and
 - (b) Statements of income, shareholders' equity, and material changes in financial position as of the end of the last fiscal year and for any period between the end of the last fiscal year and the date of the last balance sheet;
- (2) A projected budget for the timeshare project for two years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;
- (3) A statement of the selling costs per unit and total sales costs for the project, including sales commissions, advertisement fees, and fees for promotional literature;
- (4) A description of the background of the promoters for the previous ten years, including information about the business experience of the promoter and any relevant criminal convictions, civil law suits, or administrative actions related to such promotion during that period;
- (5) A statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;
- (6) A statement disclosing when and where the promoter or an affiliate has previously sold timeshares;
- (7) A statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;
- (8) Copies of all timeshare instruments; and
- (9) Any additional information to describe the risks which the director considers appropriate. [1983 1st ex.s. c 22 § 4.]

64.36.035 Applications for registration, consents to service, affidavits, and permits to market—Authorized signatures required—Corporate shield disclaimer prohibited. (1) Applications, consents to service of process, affidavits, and permits to market shall be signed by the promoter, unless a trustee or person with power of attorney is specifically authorized to make such signatures. If the signature of a person with a power of attorney or trustee is used, the filing of the signature shall include a copy of the authorizations for the signature. No promoter or other

person responsible under this chapter shall disclaim responsibility because the signature of a trustee or attorney in fact, or other substitute was used.

(2) If the promoter is a corporation or a general partnership, each natural person therein, with a ten percent or greater interest or share in the promoter, shall, in addition to the promoter, be required to sign as required in this section, but may authorize a trustee or a person with power of attorney to make the signatures.

(3) All persons required to use or authorizing the use of their signatures in this section, individually or otherwise, shall be responsible for affidavits, applications, and permits signed, and for compliance with the provisions of this chapter. Individuals whose signatures are required under this section shall not disclaim their responsibilities because of any corporate shield. [1987 c 370 § 2.]

64.36.040 Application for registration—When effective. If no stop order is in effect and no proceeding is pending under RCW 64.36.100, a registration application becomes effective at 3:00 p.m. Pacific Standard Time on the afternoon of the thirtieth calendar day after the filing of the application or the last amendment or at such earlier time as the director determines. [1983 1st ex.s. c 22 § 5.]

64.36.050 Timeshare offering—Duration of registration—Renewal—Amendment—Penalties. (1) A timeshare offering is registered for a period of one year from the effective date of registration unless the director specifies a different period.

(2) Registration of a timeshare offering may be renewed for additional periods of one year each, unless the director by rule specifies a different period, by filing a renewal application with the director no later than thirty days before the expiration of the period in subsection (1) of this section and paying the prescribed fees. A renewal application shall contain any information the director requires to indicate any material changes in the information contained in the original application.

(3) If a material change in the condition of the promoter, the promoter's affiliates, the timeshare project, or the operation or management of the timeshare project occurs during any year, an amendment to the documents filed under RCW 64.36.030 shall be filed, along with the prescribed fees, as soon as reasonably possible and before any further sales occur.

(4) The promoter shall keep the information in the written disclosures reasonably current at all times by amending the registration. If the promoter fails to amend and keep current the written disclosures or the registrations in instances of material change, the director may require compliance under RCW 64.36.100 and assess penalties. [1987 c 370 § 3; 1983 1st ex.s. c 22 § 6.]

64.36.060 Application for registration—Acceptance of disclosure documents—Waiver of information—Additional information. (1) In lieu of the documents required to be filed under RCW 64.36.030, the director may by rule accept:

- (a) Any disclosure document filed with agencies of the United States or any other state;

(b) Any disclosure document compiled in accordance with any rule of any agency of the United States or any other state; or

(c) Any documents submitted pursuant to registration of a timeshare offering under chapter 58.19 RCW before August 1, 1983.

(2) The director may by rule waive disclosure of information which the director considers unnecessary for the protection of timeshare purchasers.

(3) The director may by rule require the provision of any other information the director considers necessary to protect timeshare purchasers. [1983 1st ex.s. c 22 § 7.]

64.36.070 Registration as timeshare salesperson required—Exemption. Any individual offering timeshare units for the individual's own account or for the account of others shall be registered as a timeshare salesperson unless the timeshare offering is exempt from registration under RCW 64.36.020. Registration may be obtained by filing an application with the department of licensing on a form prescribed by the director. The director may require that the applicant demonstrate sufficient knowledge of the timeshare industry and this chapter. A timeshare salesperson who is licensed as a real estate broker or salesperson under chapter 18.85 RCW is exempt from the registration requirement of this section. [1983 1st ex.s. c 22 § 8.]

64.36.081 Fees. (1) Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. These fees shall be prepaid and the director may establish fees for the following:

(a) Processing an original application for registration of a timeshare offering, along with an additional fee for each interval registered or in the timeshare program;

(b) Processing consolidations or adding additional inventory into the program;

(c) Reviewing and granting exemptions;

(d) Processing annual or periodic renewals;

(e) Initially and annually processing and administering any required impound, trust, or escrow arrangement;

(f) The review of advertising or promotional materials;

(g) Registering persons in the business of selling promotional programs for use in timeshare offerings or sales presentations;

(h) Registrations and renewal of registrations of salespersons;

(i) The transfer of salespersons' permits to other promoters;

(j) Administering and processing examinations for salespersons;

(k) Conducting site inspections of registered projects and projects for which registration is pending.

(2) The director may establish penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the disclosure document in a timely manner for material changes, as required in this chapter and rules adopted under this chapter. [1987 c 370 § 4.]

64.36.085 Inspections of projects—Identification of inspectors. (1) The director may require inspections of

projects registered under this chapter and promoters and their agents shall cooperate by permitting staff of the department to conduct the inspections.

(2) The director may perform "spot checks" or inspections of sales offices, during tours or sales presentations or normal business hours, for purposes of enforcing this chapter and determining compliance by the operator and salespersons in the sales, advertising, and promotional activities regulated under this chapter. These inspections or spot checks may be conducted during or at the time of sales presentations or during the hours during which sales are ordinarily scheduled.

(3) The department employee making the inspections shall show identification upon request. It is a violation of this chapter for the operator or its sales representatives to refuse an inspection or refuse to cooperate with employees of the department conducting the inspection. [1987 c 370 § 5.]

64.36.090 Denial, suspension, or revocation of timeshare salesperson's application, registration, or license—Conditions—Summary order. The director may by order deny, suspend, or revoke a timeshare salesperson's registration or application for registration or a salesperson's license under chapter 18.85 RCW who is selling under this chapter, if the director finds that the order is in the public interest and the applicant or registrant:

(1) Has filed an application for registration as a timeshare salesperson or as a licensee under chapter 18.85 RCW which, as of its effective date, is incomplete in any material respect or contains any statement which is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has violated or failed to comply with any provision of this chapter or a predecessor act or any rule or order issued under this chapter or a predecessor act;

(3) Has been convicted within the past five years of any misdemeanor or felony involving theft, fraud, or any consumer protection statute, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court or administrative order from engaging in or continuing any conduct or practice involving any aspect of the timeshare business;

(5) Has engaged in dishonest or unethical practices in the timeshare, real estate, or camp resort business;

(6) Is insolvent either in the sense that the individual's liabilities exceed his or her assets or in the sense that the individual cannot meet his or her obligations as they mature; or

(7) Has not complied with any condition imposed by the director or is not qualified on the basis of such factors as training, experience, or knowledge of the timeshare business or this chapter.

The director may by order summarily postpone or suspend registration of the salesperson pending final determination of any proceeding under RCW 64.36.180. [1987 c 370 § 9; 1983 1st ex.s. c 22 § 9.]

64.36.100 Denial, suspension, or revocation of timeshare application or registration—Conditions—Notification. (1) The director may issue an order denying,

suspending, or revoking any timeshare application or registration if the director finds that the order is in the public interest and that:

(a) The application, written disclosure, or registration is incomplete or contains any statement which is false or misleading with respect to any material fact;

(b) Any provision of this chapter, the permit to market, or any rule or order lawfully issued under this chapter has been violated by the promoter, its affiliates, or any natural person whose signature is required under this chapter;

(c) The activities of the promoter include, or would include, activities which are unlawful or in violation of a law, rule, or ordinance in this state or another jurisdiction;

(d) The timeshare offering has worked or tended to work a fraud on purchasers, or would likely be adverse to the interests or the economic or physical welfare of purchasers;

(e) The protections and security arrangements to assure future quiet enjoyment required under RCW 64.36.130 have not been provided as required by the director for the protection of purchasers: or

(f) The operating budget proposed by the promoter or promoter-controlled association appears inadequate to meet operating costs or funding of reserve accounts or fees for a consultant to determine adequacy have not been paid by the promoter.

(2) The director shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within fifteen days of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the director modifies or vacates it. [1987 c 370 § 10; 1983 1st ex.s. c 22 § 10.]

64.36.110 Requirements of transfer of promoter's interest—Notice to purchaser. A promoter shall not sell, lease, assign, or otherwise transfer the promoter's interest in the timeshare program unless the transferee agrees in writing to honor the timeshare purchaser's right to use and occupy the timeshare unit, honor the purchaser's right to cancel, and comply with this chapter. In the event of a transfer, each timeshare purchaser whose contract may be affected shall be given written notice of the transfer when the transfer is made. [1983 1st ex.s. c 22 § 11.]

64.36.120 Good faith required—Provision relieving person from duty prohibited—Out-of-state jurisdiction or venue designation void. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A timeshare promoter shall not require any timeshare purchaser to agree to a release, assignment, novation, waiver, or any other provision which relieves any person from a duty imposed by this chapter.

(3) Any provision in a timeshare contract or agreement which designates jurisdiction or venue in a forum outside this state is void with respect to any cause of action which is enforceable in this state. [1983 1st ex.s. c 22 § 12.]

64.36.130 Impoundment of proceeds from sales authorized—Establishment of trusts, escrows, etc. (1) The director may by rule require as a condition of registra-

tion under this chapter that the proceeds from the sale of the timeshares be impounded until the promoter receives an amount established by the director. The director may by rule determine the conditions of any impoundment required under this section, including the release of moneys for promotional purposes.

(2) The director, in lieu of or in addition to requiring impoundment under subsection (1) of this section, may require that the registrant establish trusts, escrows, or any other similar arrangement that assures the timeshare purchaser quiet enjoyment of the timeshare unit.

(3) Impounding will not be required for those timeshare offerors who are able to convey fee simple title, along with title insurance: PROVIDED, That no other facilities are promised in the offering. [1983 1st ex.s. c 22 § 13.]

64.36.140 Disclosure document—Contents. Any person who offers or sells a timeshare shall provide the prospective purchaser a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The timeshare salesperson shall date and sign the disclosure document. The disclosure document shall include:

(1) The official name and address of the promoter, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) The location of the timeshare property;

(3) A general description of the timeshare property and the timeshare units;

(4) A list of all units offered by the promoter in the same project including:

(a) The types, prices, and number of units;

(b) Identification and location of units;

(c) The types and durations of the timeshares;

(d) The maximum number of units that may become part of the timeshare property; and

(e) A statement of the maximum number of timeshares that may be created or a statement that there is no maximum.

(5) A description of any financing offered by the promoter;

(6) A statement of ownership of all properties included in the timeshare offering including any liens or encumbrances affecting the property;

(7) Copies of any agreements or leases to be signed by timeshare purchasers at closing and a copy of the timeshare instrument;

(8) The identity of the managing entity and the manner, if any, whereby the promoter may change the managing entity;

(9) A description of the selling costs both per unit and for the total project at the time the sale is made;

(10) A statement disclosing when and where the promoter or its affiliate has previously sold timeshares;

(11) A description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including:

(a) The current amounts assessed;

(b) The method and formula for changes; and

(c) The formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(12) Any services which the promoter provides or expenses the promoter pays which the promoter expects may become a timeshare expense at any subsequent time;

(13) A statement in bold face type on the cover page of the disclosure document and the cover page of the timeshare purchase agreement that within seven days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a promoter or a timeshare salesperson and that the cancellation must be in writing and be either hand delivered or mailed to the promoter or the promoter's agent;

(14) Any restraints on transfer of a timeshare or portion thereof;

(15) A description of the insurance coverage provided for the benefit of timeshare owners;

(16) A full and accurate disclosure of whether the timeshare owners are to be permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(17) Any additional information the director finds necessary to fully inform prospective timeshare purchasers, including but not limited to information required by RCW 64.36.030. [1983 1st ex.s. c 22 § 3.]

64.36.150 Disclosure document to prospective purchasers—Cancellation and refund—Voidable agreement. The promoter or any person offering timeshare interest shall provide a prospective purchaser with a copy of the disclosure document described in RCW 64.36.140 before the execution of any agreement for the purchase of a timeshare. A purchaser may, for seven days following execution of an agreement to purchase a timeshare, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or the promoter's agent either by mail or hand delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for seven days thereafter. [1983 1st ex.s. c 22 § 14.]

64.36.160 Application of liability provisions. No provision of this chapter imposing any liability applies to any act or omission in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule, form, or order may later be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1983 1st ex.s. c 22 § 15.]

64.36.170 Noncompliance—Unfair practice under chapter 19.86 RCW. Any failure to comply with this chapter constitutes an unfair and deceptive trade practice under chapter 19.86 RCW. [1983 1st ex.s. c 22 § 16.]

64.36.180 Entry of order—Summary order—Notice—Hearing. (1) Upon the entry of an order under RCW 64.36.090, 64.36.100, or 64.36.200, the director shall promptly notify the applicant or registrant that it has been entered and the reasons therefor, and that if requested in

writing by the applicant or registrant within fifteen days after the receipt of the director's notification, the matter will be scheduled for hearing in accordance with subsections (2) and (3) of this section.

(2) Upon entry of a summary order, the following shall apply:

(a) If entry of the summary order results in the denial of an application under RCW 64.36.090 or 64.36.100, the hearing shall be held within a reasonable time and in accordance with chapter 34.05 RCW.

(b) If entry of the summary order results in the revocation or suspension of a registration under RCW 64.36.090 or 64.36.100, the registrant shall have an opportunity within ten days of receipt of such order to appear before the director or securities administrator to show cause why the summary order should not remain in effect. If the director or securities administrator finds that good cause is shown, he or she shall vacate the summary order. If he or she finds that good cause is not shown, the summary order shall remain in effect and the director shall give notice of opportunity for hearing which shall be held within a reasonable time.

(3) Upon entry of any nonsummary order under RCW 64.36.090 or 64.36.100, the hearing shall be held within a reasonable time and in accordance with chapter 34.05 RCW.

(4) If the applicant or registrant does not request a hearing within fifteen days after receipt of notice of opportunity for hearing, the order shall become final. [1983 1st ex.s. c 22 § 17.]

64.36.185 Director's powers—Employment of outside persons for advice on project operating budget—Reimbursement by promoter—Notice and hearing. (1) If it appears that the operating budget of a project fails to adequately provide for funding of reserve accounts, the director may employ outside professionals or consultants to provide advice or to develop an alternative budget. The promoter shall pay or reimburse the department for the costs incurred for such professional opinions.

(2) Before employing consultants under this section, the director shall provide the applicant with written notice and an opportunity for a hearing under chapter 34.05 RCW. [1987 c 370 § 6.]

64.36.190 Director's powers—Application to superior court to compel compliance. (1) The director may:

(a) Make public or private investigations within or outside the state to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of this chapter or any rule or order issued under this chapter, or to aid in the enforcement of this chapter and rules or orders issued under this chapter;

(b) Administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director considers relevant to the inquiry;

(c) Publish information concerning any violation of this chapter or any rule or order issued under this chapter.

(2) If any person fails to comply with a lawful subpoena, refuses to testify under lawful interrogation, or refuses to produce documents and records, the director may apply to the superior court of any county for relief. After satisfactory evidence of wilful disobedience, the court may compel obedience by proceedings for contempt. [1983 1st ex.s. c 22 § 18.]

64.36.195 Assurances of discontinuance—Violation of assurance grounds for action. The director or persons to whom the director delegates such powers may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation or breaching of an assurance under this section shall be grounds for a suspension, revocation of registration, or imposition of a fine. [1987 c 370 § 7.]

64.36.200 Cease and desist order—Notification—Hearing. (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Upon the entry of the temporary order to cease and desist, the director shall promptly notify the recipient of the order that it has been entered and the reasons therefor and that if requested in writing by such person within fifteen days after receipt of the director's notification, the matter will be scheduled for hearing which shall be held within a reasonable time and in accordance with chapter 34.05 RCW. The temporary order shall remain in effect until ten days after the hearing is held.

(3) If a person does not request a hearing within fifteen days after receipt of notice of opportunity for hearing, the order shall become final. [1983 1st ex.s. c 22 § 19.]

64.36.210 Unlawful acts. It is unlawful for any person in connection with the offer, sale, or lease of any timeshare in the state:

(1) To make any untrue or misleading statement of a material fact, or to omit a material fact;

(2) To employ any device, scheme, or artifice to defraud;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(4) To file, or cause to be filed, with the director any document which contains any untrue or misleading information; or

(5) To violate any rule or order of the director. [1983 1st ex.s. c 22 § 20.]

64.36.220 Injunction, restraining order, writ of mandamus—Costs and attorney's fees—Appointment of receiver or conservator—Penalties. (1) The attorney general, in the name of the state or the director, may bring an action to enjoin any person from violating any provision

of this chapter. Upon a proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional orders or judgments which may be necessary to restore to any person any interest in any money or property, real or personal, which may have been acquired by means of any act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(2) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(3) The attorney general, in the name of the state or the director, may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(4) Any person who violates any provision of this chapter is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection shall be imposed in a civil action brought by the attorney general and shall be deposited in the general fund of the state treasury. Any action for recovery of a civil penalty shall be commenced within five years of the date of the alleged violation. [1983 1st ex.s. c 22 § 21.]

64.36.225 Liability of registrant or applicant for costs of proceedings. A registrant or applicant against whom an administrative or legal proceeding authorized under this chapter has been filed, shall be liable for and reimburse to the state of Washington by payment into the general fund, all administrative and legal costs, including attorney fees, incurred by the department in issuing and conducting administrative or legal proceedings that result in a final legal or administrative determination of any type or degree, in favor of the department or the state of Washington. [1987 c 370 § 8.]

64.36.230 Criminal penalties—Referral of evidence of violations. (1) Any person who violates RCW 64.36.020 is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. Any person who knowingly violates RCW 64.36.020 or 64.36.210 is guilty of a class C felony punishable under chapter 9A.20 RCW. No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

(2) The director may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney who may, with or without this reference, institute appropriate criminal proceedings. [1983 1st ex.s. c 22 § 22.]

64.36.240 Liability for violation of chapter. Any person who offers, sells, or materially aids in such offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare who may sue either at law or in equity to recover the consideration paid for the timeshare, together with interest at ten percent per annum from date of payment and costs upon the tender of the timeshare, or for

damages if the person no longer owns the timeshare. [1983 1st ex.s. c 22 § 23.]

64.36.250 Appointment of director to receive service—Requirements for effective service. Every applicant for registration under this chapter shall file with the director, in a form the director prescribes by rule, an irrevocable consent appointing the director to be the attorney of the applicant to receive service of any lawful process in any civil suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order issued under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless: (1) The plaintiff, who may be the director in a suit, action, or proceeding instituted by the director, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last address of the respondent or defendant on file with the director; and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1983 1st ex.s. c 22 § 24.]

64.36.260 Certain acts not constituting findings or approval by the director—Certain representations unlawful. Neither the fact that an application for registration nor a disclosure document under RCW 64.36.140 has been filed, nor the fact that a timeshare offering is effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading, nor does either fact mean that the director has determined in any way the merits of, qualifications of, or recommended or given approval to any person, timeshare, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser any representation inconsistent with this section. [1983 1st ex.s. c 22 § 25.]

64.36.270 Rules, forms, and orders—Interpretive opinions. The director may make, amend, and repeal rules, forms, and orders when necessary to carry out this chapter. The director may honor requests for interpretive opinions. [1983 1st ex.s. c 22 § 26.]

64.36.280 Administration of chapter—Delegation of powers. The director shall appoint a competent person within the department of licensing to administer this chapter. The director shall delegate to the administrator any powers, subject to the authority of the director, which may be necessary to carry out this chapter. The administrator shall hold office at the pleasure of the director. [1983 1st ex.s. c 22 § 27.]

64.36.290 Application of chapters 21.20, 58.19, and 19.105 RCW—Exemption of certain camping and outdoor recreation enterprises. (1) All timeshares registered under this chapter are exempt from chapters 21.20, 58.19, and 19.105 RCW.

(2) This chapter shall not apply to any enterprise that has as its primary purpose camping and outdoor recreation and camping sites designed and promoted for the purpose of purchasers locating a trailer, tent, tent trailer, pick-up camper, or other similar device used for land-based portable housing. [1987 c 370 § 11; 1983 1st ex.s. c 22 § 28.]

64.36.300 Application of chapter 34.05 RCW. Chapter 34.05 RCW applies to any administrative procedures carried out by the director under this chapter unless otherwise provided in this chapter. [1983 1st ex.s. c 22 § 30.]

64.36.310 Copy of advertisement to be filed with director before publication—Application of chapter limited. (1) No person may publish any advertisement in this state offering a timeshare which is subject to the registration requirements of RCW 64.36.020 unless a true copy of the advertisement has been filed in the office of the director at least seven days before publication or a shorter period which the director by rule may establish. The right to subsequently publish the advertisement is subject to the approval of the director within that seven day period.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter. This subsection does not apply, however, to any publication devoted primarily to the soliciting of resale timeshare offerings and where the publisher or owner of the publication collects advance fees for the purpose of locating or finding potential resale buyers or sellers. [1987 c 370 § 12; 1983 1st ex.s. c 22 § 31.]

64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action. (1) No person, including a promoter, may advertise, sell, contract for, solicit, arrange, or promise a free gift, an award, a prize, or other item of value in this state as a condition for attending a sales presentation, touring a facility, or performing other activities in connection with the offer or sale of a timeshare under this chapter, without first providing the director with a bond, letter of credit, cash depository, or other security arrangement that will assure performance by the promisor and delivery of the promised gift, award, sweepstakes, prize, or other item of value.

(2) Promoters under this chapter shall be strictly liable for delivering promised gifts, prizes, awards, or other items of value offered or advertised in connection with the marketing of timeshares.

(3) Persons promised but not receiving gifts, prizes, awards, or other items of consideration covered under this section, shall be entitled in any cause of action in the courts of this state in which their causes prevail, to be awarded treble the stated value of the gifts, prizes, or awards, court costs, and reasonable attorney fees.

(4) The director may require that any fees or funds of any description collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or other items of value covered under this section,

be placed in a depository in this state, where they shall remain until performance by the promisor.

(5) The director may require commercial promotional programs to be registered and require the provision of whatever information, including financial information, the department deems necessary for protection of purchasers.

(6) Persons offering commercial promotional programs shall sign and present to the department a consent to service of process, in the manner required of promoters in this chapter.

(7) Registrants or their agents or other persons shall not take possession of promotional materials covered under this section and RCW 64.36.310, from recipients who have received the materials for attending a sales presentation or touring a project, unless the permission of the recipient is received and the recipient is provided with an accurate signed copy describing such promotional materials. The department shall adopt rules enforcing this subsection.

(8) Chapter 19.170 RCW applies to free gifts, awards, prizes, or other items of value regulated under this chapter. [1991 c 227 § 10; 1987 c 370 § 13.]

Severability—1991 c 227: See RCW 19.170.900.

64.36.330 Membership lists available for members and owners—Conditions—Exclusion of members' names from list—Commercial use of list. (1) Concerning any timeshare offered or sited in this state, it is unlawful and a violation of this chapter and chapter 19.86 RCW for any person, developer, promoter, operator, or other person in control of timeshares or the board of directors or appropriate officer of timeshares with such responsibilities, to fail to provide a member/owner of a timeshare with a membership list, including names, addresses, and lot, unit, or interval owned, under the following circumstances:

(a) Upon demand or by rule or order of the director of the department, for whatever purpose deemed necessary to administer this chapter;

(b) Upon written request sent by certified mail being made by a member of the timeshare, to a declarant, promoter, or other person who has established and is yet in control of the timeshare;

(c) Upon written request sent by certified mail of a member of a timeshare to the board of directors or appropriate officer of the timeshare or an affiliated timeshare.

(2) The board of directors of the timeshare may require that any applicant for a membership list, other than the department, pay reasonable costs for providing the list and an affidavit that the applicant will not use and will be responsible for any use of the list for commercial purposes.

(3) Upon request, a member's name shall be excluded from a membership list available to any person other than the director of licensing for purposes of administering statutes that are its responsibility. Such persons shall make their request for exclusion in writing by certified mail to the board of directors or the appropriate officer or director of the timeshare.

(4) It is unlawful for any person to use a membership list obtained under this section or otherwise, for commercial purposes, unless written permission to do so has been received from the board of directors or appropriate officer of the timeshare. Wilful use of a membership list for commercial

purposes without such permission shall subject the violator to damages, costs, and reasonable attorneys' fees in any legal proceedings instituted by a member in which the member prevails alleging violation of this section. Members may petition the courts of this state for orders restraining such commercial use. [1987 c 370 § 14.]

64.36.900 Short title. This chapter may be known and cited as "The Timeshare Act." [1983 1st ex.s. c 22 § 32.]

64.36.901 Severability—1983 1st ex.s. c 22. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 22 § 35.]

Chapter 64.38

HOMEOWNERS' ASSOCIATIONS

Sections

- 64.38.005 Intent.
- 64.38.010 Definitions.
- 64.38.015 Association membership.
- 64.38.020 Association powers.
- 64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board.
- 64.38.030 Association bylaws.
- 64.38.035 Association meetings—Notice—Board of directors.
- 64.38.040 Quorum for meeting.
- 64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts.
- 64.38.050 Violation—Remedy—Attorneys' fees.

64.38.005 Intent. The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations. [1995 c 283 § 1.]

64.38.010 Definitions. For purposes of this chapter:

(1) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes. [1995 c 283 § 2.]

64.38.015 Association membership. The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped. [1995 c 283 § 3.]

64.38.020 Association powers. Unless otherwise provided in the governing documents, an association may:

(1) Adopt and amend bylaws, rules, and regulations;
 (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;

(3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common areas;

(7) Cause additional improvements to be made as a part of the common areas;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

(9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;

(10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;

(11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

(12) Exercise any other powers conferred by the bylaws;

(13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(14) Exercise any other powers necessary and proper for the governance and operation of the association. [1995 c 283 § 4.]

64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board. (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [1995 c 283 § 5.]

64.38.030 Association bylaws. Unless provided for in the governing documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate. [1995 c 283 § 6.]

64.38.035 Association meetings—Notice—Board of directors. (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the

association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure. [1995 c 283 § 7.]

64.38.040 Quorum for meeting. Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting. [1995 c 283 § 8.]

64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts. (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of

association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. [1995 c 283 § 9.]

64.38.050 Violation—Remedy—Attorneys' fees.

Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party. [1995 c 283 § 10.]

Chapter 64.40

PROPERTY RIGHTS—DAMAGES FROM GOVERNMENTAL ACTIONS

Sections

64.40.010	Definitions—Defense in action for damages.
64.40.020	Applicant for permit—Actions for damages from governmental actions.
64.40.030	Commencement of action—Time limitation.
64.40.040	Remedies cumulative.
64.40.050	Local government immunity from liability.
64.40.900	Severability—1982 c 232.

64.40.010 Definitions—Defense in action for damages. As used in this chapter, the terms in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Agency" means the state of Washington, any of its political subdivisions, including any city, town, or county, and any other public body exercising regulatory authority or control over the use of real property in the state.

(2) "Permit" means any governmental approval required by law before an owner of a property interest may improve, sell, transfer, or otherwise put real property to use.

(3) "Property interest" means any interest or right in real property in the state.

(4) "Damages" means reasonable expenses and losses, other than speculative losses or profits, incurred between the time a cause of action arises and the time a holder of an interest in real property is granted relief as provided in RCW 64.40.020. Damages must be caused by an act, necessarily incurred, and actually suffered, realized, or expended, but are not based upon diminution in value of or damage to real property, or litigation expenses.

(5) "Regulation" means any ordinance, resolution, or other rule or regulation adopted pursuant to the authority provided by state law, which imposes or alters restrictions, limitations, or conditions on the use of real property.

(6) "Act" means a final decision by an agency which places requirements, limitations, or conditions upon the use of real property in excess of those allowed by applicable regulations in effect on the date an application for a permit is filed. "Act" also means the failure of an agency to act within time limits established by law in response to a property owner's application for a permit: PROVIDED, That there is no "act" within the meaning of this section when the owner of a property interest agrees in writing to extensions of time, or to the conditions or limitations imposed upon an application for a permit. "Act" shall not include lawful decisions of an agency which are designed to prevent a condition which would constitute a threat to the health, safety, welfare, or morals of residents in the area.

In any action brought pursuant to this chapter, a defense is available to a political subdivision of this state that its act was mandated by a change in statute or state rule or regulation and that such a change became effective subsequent to the filing of an application for a permit. [1982 c 232 § 1.]

64.40.020 Applicant for permit—Actions for damages from governmental actions. (1) Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law: PROVIDED, That the action is unlawful or in excess of lawful authority only if the final decision of the agency was made with knowledge of its unlawfulness or that it was in excess of lawful authority, or it should reasonably have been known to have been unlawful or in excess of lawful authority.

(2) The prevailing party in an action brought pursuant to this chapter may be entitled to reasonable costs and attorney's fees.

(3) No cause of action is created for relief from unintentional procedural or ministerial errors of an agency.

(4) Invalidation of any regulation in effect prior to the date an application for a permit is filed with the agency shall not constitute a cause of action under this chapter. [1982 c 232 § 2.]

64.40.030 Commencement of action—Time limitation. Any action to assert claims under the provisions of this chapter shall be commenced only within thirty days after all administrative remedies have been exhausted. [1982 c 232 § 3.]

64.40.040 Remedies cumulative. The remedies provided by this chapter are in addition to any other remedies provided by law. [1982 c 232 § 4.]

64.40.050 Local government immunity from liability. (*Expires June 30, 2000.*) A local government is not liable for damages under this chapter due to the local government's failure to make a final decision within the time limits established in RCW 36.70B.090. [1995 c 347 § 421.]

Expiration date—Application—1995 c 347 §§ 413 and 421: See note following RCW 36.70B.090.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

64.40.900 Severability—1982 c 232. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 232 § 5.]

Chapter 64.44

CONTAMINATED PROPERTIES

Sections

64.44.005	Legislative finding.
64.44.010	Definitions.
64.44.020	Reporting—Notice—Duties of local health officer.
64.44.030	Unfit for use—Notice—Hearing.
64.44.040	City or county options.
64.44.050	Decontamination by owner—Requirements.
64.44.060	Certification of contractors—Denial, suspension, or revocation of certificate—Duties of department of health—Decontamination account.
64.44.070	Rules and standards—Authority to develop.
64.44.080	Civil liability—Immunity.
64.44.900	Application—Other remedies.
64.44.901	Severability—1990 c 213.

64.44.005 Legislative finding. The legislature finds that some properties are being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs. Innocent members of the public may be harmed by the residue left by these chemicals when the properties are subsequently rented or sold without having been decontaminated. [1990 c 213 § 1.]

64.44.010 Definitions. The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is: (a) Certified by the department as provided for in RCW 64.44.060, or (b) until January 1, 1991, listed with the department as provided for in section 8, chapter 213, Laws of 1990.

(2) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(3) "Hazardous chemicals" means the following substances used in the manufacture of illegal drugs: (a) Hazardous substances as defined in RCW 70.105D.020, and (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans.

(4) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(5) "Property" means any property, site, structure, or part of a structure which is involved in the unauthorized manufacture or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, or any shop, booth, or garden. [1990 c 213 § 2.]

Effective date—1990 c 213 §§ 2, 12: "Sections 2 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety or support of the state government and its public institutions, and shall take effect on the effective date of the 1989-91 supplemental omnibus appropriations act (SSB 6407) [April 23, 1990] if specific funding for this act is provided therein." [1990 c 213 § 17.]

64.44.020 Reporting—Notice—Duties of local health officer. Whenever a law enforcement agency becomes aware that property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer. The local health officer shall cause a posting of a notice on the premises immediately upon being notified of the contamination and shall cause an inspection to be done on the property within fourteen days after receiving the notice of contamination. If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer about the possible contamination. Local health officers or boards may charge reasonable fees for inspections of property requested by property owners.

If property is determined to be contaminated, then the local health officer shall cause a posting of a notice on the premises. A local health officer may enter, inspect, and survey at reasonable times any properties for which there are reasonable grounds to believe that the property has become contaminated.

Local health officers must report all cases of contaminated property to the state department of health. The department may make the list of contaminated properties available to health associations, landlord and realtor organizations, prosecutors, and other interested groups. The department shall promptly update the list of contaminated properties to remove those which have been decontaminated according to provisions of this chapter. [1990 c 213 § 3.]

64.44.030 Unfit for use—Notice—Hearing. If after the inspection of the property, the local health officer finds that it is contaminated, then the property shall be found unfit for use. The local health officer shall cause to be served either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located, and shall post in a conspicuous place on the property, an order

prohibiting use. If the whereabouts of such persons is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made either by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor, and the order shall be posted conspicuously at the residence. A copy of the order shall also be mailed, addressed to each person or party having a recorded right, title, estate, lien, or interest in the property. Such order shall contain a notice that a hearing before the local health board or officer shall be held upon the request of a person required to be notified of the order under this section. The request for a hearing must be made within ten days of serving the order. The hearing shall then be held within not less than twenty days nor more than thirty days after the serving of the order. The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law. In any hearing concerning whether property is fit for use, the property owner has the burden of showing that the property is decontaminated or fit for use. The owner or any person having an interest in the property may file an appeal on any order issued by the local health board or officer within thirty days from the date of service of the order with the appeals commission established pursuant to RCW 35.80.030. All proceedings before the appeals commission, including any subsequent appeals to superior court, shall be governed by the procedures established in chapter 35.80 RCW. [1990 c 213 § 4.]

64.44.040 City or county options. The city or county in which the contaminated property is located may take action to condemn or demolish property or to require the property be vacated or the contents removed from the property. The city or county must use an authorized contractor if property is demolished or removed under this section. No city or county may condemn or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted. [1990 c 213 § 5.]

64.44.050 Decontamination by owner—Requirements. An owner of contaminated property who desires to have the property decontaminated must use the services of an authorized contractor to decontaminate the property. The contractor shall prepare and submit a written work plan for decontamination to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A notice shall be recorded in the real property records if applicable, indicating the property has been decontaminated in accor-

dance with rules of the state department of health. [1990 c 213 § 6.]

64.44.060 Certification of contractors—Denial, suspension, or revocation of certificate—Duties of department of health—Decontamination account. (1)

After January 1, 1991, a contractor may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors and their employees on the essential elements in assessing property used as an illegal drug manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, the contractor or employee shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to file a work plan;

(c) Failing to perform work pursuant to the work plan;

(d) Failing to perform work that meets the requirements of the department;

(e) The certificate was obtained by error, misrepresentation, or fraud; or

(f) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for the issuance and renewal of certificates, the administration of examinations, and for the review of training courses.

(7) The decontamination account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in this account. Moneys in the account may only be spent after appropriation for costs incurred by the department in the administration and enforcement of this chapter. [1997 c 58 § 878; 1990 c 213 § 7.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

64.44.070 Rules and standards—Authority to develop.

The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department shall provide technical assistance to local health boards and health officers to carry out their duties under this chapter. The department shall develop guidelines for decontamination of a property used as a drug laboratory and methods for the testing of ground water, surface water, soil, and septic tanks for contamination. [1990 c 213 § 9.]

64.44.080 Civil liability—Immunity. Members of the state board of health and local boards of health, local health officers, and employees of the department of health and local health departments are immune from civil liability arising out of the performance of their duties under this chapter, unless such performance constitutes gross negligence or intentional misconduct. [1990 c 213 § 10.]

64.44.900 Application—Other remedies. This chapter shall not limit state or local government authority to act under any other statute, including chapter 35.80 or 7.48 RCW. [1990 c 213 § 11.]

64.44.901 Severability—1990 c 213. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 213 § 14.]

Title 65

RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

- 65.04** Duties of county auditor.
- 65.08** Recording.
- 65.12** Registration of land titles (Torrens Act).
- 65.16** Legal publications.
- 65.20** Classification of manufactured homes.

Assessor's plats: Chapter 58.18 RCW.

Assignment, satisfaction of mortgages: Chapter 61.16 RCW.

Civil procedure, legal publication generally: Chapter 4.28 RCW.

Community property

claim of spouse to be filed: RCW 26.16.100.

purchaser protected by record title: RCW 26.16.095.

Copies of recorded instruments as evidence: Chapter 5.44 RCW.

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

County auditor: Chapter 36.22 RCW.

Crop liens: Chapter 60.11 RCW.

Eminent domain by

corporations, judgment or decree: RCW 8.20.090.

county, decree: RCW 8.08.060.

school districts, decree: RCW 8.16.110.

state, judgment or decree: RCW 8.04.120.

Eminent domain, state lands, decree: RCW 8.28.010.

Fees of county officers: Chapter 36.18 RCW.

Field notes of irregular subdivided tracts: RCW 84.40.170.

Filing reports, claims, tax returns, etc.: RCW 1.12.070.

Lis pendens, effect of filing: RCW 4.28.320.

Notice of proposed constitutional amendments, publication of: RCW 29.27.072, 29.27.074.

Plats: Chapter 58.08 RCW, RCW 84.40.170.

Powers of appointment: Chapter 11.95 RCW.

RCW 65.08.070 applicable to rents and profits of real property. RCW 7.28.230.

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

Secretary of state, duties: RCW 43.07.030.

65.04.115 Names on documents, etc., to be printed or typewritten—
Indexing.

65.04.130 Fees to be paid or tendered.

65.04.140 Auditor as custodian of records.

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

County auditor: Chapter 36.22 RCW.

Fees of county officers, generally: Chapter 36.18 RCW.

Powers of appointment: Chapter 11.95 RCW.

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

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering or transmitting electronically an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Record location number" means a unique number that identifies the storage location (book or volume and page, reel and frame, instrument number, auditor or recording officer file number, receiving number, electronic retrieval code, or other specific place) of each instrument in the public records accessible in the same recording office where the instrument containing the reference to the location is found.

(5) "Grantor/grantee" for recording purposes means the names of the parties involved in the transaction used to create the recording index. There will always be at least one grantor and one grantee for any document. In some cases, the grantor and the grantee will be the same individual(s), or one of the parties may be the public. [1998 c 27 § 3; 1996 c 229 § 1; 1991 c 26 § 3.]

Chapter 65.04

DUTIES OF COUNTY AUDITOR

Sections

- 65.04.015 Definitions.
- 65.04.020 Duty to provide records.
- 65.04.030 Instruments to be recorded or filed
- 65.04.040 Method for recording instruments—Marginal notations—
Arrangement of records.
- 65.04.045 Recorded instruments—Requirements—Form.
- 65.04.047 Recorded instruments—Cover sheet—When required—
Form
- 65.04.050 Index of instruments, how made and kept—Recording of
plat names.
- 65.04.060 Record when lien is discharged.
- 65.04.070 Recording judgments affecting real property.
- 65.04.080 Entries when instruments offered for record.
- 65.04.090 Further endorsements—Delivery.
- 65.04.110 Liability of auditor for damages.

65.04.020 Duty to provide records. For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such books for records as the business of the office requires. [1985 c 44 § 14; 1893 c 119 § 10; Code 1881 § 2726; RRS § 10600.]

65.04.030 Instruments to be recorded or filed. The auditor or recording officer must, upon the payment of the fees as required in RCW 36.18.010 for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic,

photomechanical, electronic format, or other approved process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: PROVIDED, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed. [1996 c 229 § 2; 1991 c 26 § 4; 1985 c 44 § 15; 1967 c 98 § 1; 1919 c 182 § 1; 1893 c 119 § 11; Code 1881 § 2727; 1865 p 26 § 1; RRS § 10601.]

Claim of spouse in community realty to be filed: RCW 26.16.100.

Marriage certificate to county auditor, filing and recording, etc.: RCW 26.04.090, 26.04.100.

Purchaser of community realty protected by record title: RCW 26.16.095.

65.04.040 Method for recording instruments—Marginal notations—Arrangement of records. Any state, county, or municipal officer charged with the duty of recording instruments in public records shall record them by record location number in the order filed, irrespective of the type of instrument, using a process that has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor or recording officer, in the exercise of the duty of recording instruments in public records, may, in lieu of transcription, record all instruments, that he or she is charged by law to record, by any electronic data transfer, photographic, photostatic, microfilm, microcard, miniature photographic or other process that actually reproduces or forms a durable medium for so reproducing the original, and which has been tested and approved for the intended purpose by the state archivist. If the county auditor or recording officer records any instrument by a process approved by the state archivist it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon if, in lieu of making said notations thereon, the auditor or recording officer immediately makes a note of such in the general index in the column headed "remarks," listing the record number location of the instrument to which the current entry relates back.

Previously recorded or filed instruments may be processed and preserved by any means authorized under this section for the original recording of instruments. The county auditor or recording officer may provide for the use of the public, media containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of the media may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor or recording officer deems proper. [1996 c 229 § 3; 1991 c 26 § 5; 1985 c 44 § 16; 1967 c 98 § 2; 1959 c 254 § 1; 1919 c 125 § 1; RRS § 10602.]

Fees for recording instruments: RCW 36.18.010.

State archivist: RCW 40.14.020.

65.04.045 Recorded instruments—Requirements—Form. (1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein. The auditor or recording officer shall only be required to index the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW 65.04.015, with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, including lot, block, plat, or section, township, and range, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in eight point type or larger. Further, all instruments presented for recording must have a one-inch margin on the top, bottom, and sides for all pages except page one, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged, and no attachments may be affixed to the pages.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:

.....

Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

[1998 c 27 § 1; 1996 c 143 § 2.]

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.047 Recorded instruments—Cover sheet—

When required—Form. If an instrument presented for recording does not contain the information required by RCW 65.04.045(1), the person preparing the instrument for recording shall prepare a cover sheet that contains the required information. The cover sheet shall be attached to the instrument and shall be recorded as a part of the instrument. An additional page fee as determined under RCW 36.18.010 shall be collected for recording of the cover sheet. Any errors in the cover sheet shall not affect the transactions contained in the instrument itself. The cover sheet need not be separately signed or acknowledged. The cover sheet information shall be used to generate the auditor's grantor/grantee index, however, the names and legal description in the instrument itself will determine the legal chain of title. The cover sheet shall be substantially the following form:

WASHINGTON STATE COUNTY
AUDITOR/RECORDER'S
INDEXING FORM

Return Address

Please print or type information

Document Title(s) (or transactions contained therein):

- 1.
- 2.
- 3.
- 4.

Grantor(s) (Last name first, then first name and initials)

- 1.
- 2.
- 3.
- 4.

5. Additional names on page ___ of document.

Grantee(s) (Last name first, then first name and initials)

- 1.
- 2.
- 3.
- 4.

5. Additional names on page ___ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Additional legal description is on page ___ of document.

Assessor's Property Tax Parcel or Account Number:

Reference Number(s) of Documents assigned or released:

Additional references on page ___ of document.

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein. [1998 c 27 § 2; 1996 c 143 § 3.]

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.050 Index of instruments, how made and kept—Recording of plat names.

Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized data base and displayed on a video display terminal. Any reference to a prior record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into eight columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded and/or the auditor's file number, remarks, description of property, assessor's property tax parcel or account number. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into eight columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. The auditor or recording officer shall also enter in the general index, the name of the party or parties platting a town, village, or addition in the column prescribed for "grantors," describing the grantee in such case as "the public." However, the auditor or recording officer shall not receive or record any such plat or map until it has been approved by the mayor and common council of the municipality in which the property so platted is situated, or if the property be not situated within any municipal corporation, then the plat must be first approved by the county legislative authority. The auditor or recording officer shall not receive for record any plat, map, or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in the office. The auditor or recording officer may establish a name reservation system to preclude the possibility of duplication of names. [1996 c 143 § 4; 1991 c 26 § 6; 1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.060 Record when lien is discharged. Whenever any mortgage, bond, lien, or instrument encumbering real

estate, has been satisfied, released or discharged, by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note in both the indices, in the column headed remarks, opposite to the appropriate entry, that such instrument, lien or incumbrance has been satisfied. And in all cases of the satisfaction or release of any recorded liens, mortgage, transcript of judgment, mechanic's liens, or other incumbrance whatsoever, the auditor shall note the same in index of transcripts of judgment. [1985 c 44 § 17; Code 1881 § 2729; 1869 p 315 § 25; RRS § 10604.]

65.04.070 Recording judgments affecting real property. The auditor must file and record with the record of deeds, grants and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant or transfer. [Code 1881 § 2730; RRS § 10605.]

65.04.080 Entries when instruments offered for record. When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in or electronically transmitted to the county auditor's office for filing or record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and note that the document was received by electronic transmission, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record, and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or filed and recorded: PROVIDED, That the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be. [1996 c 229 § 4; 1985 c 44 § 18; 1927 c 187 § 1; Code 1881 § 2731; 1869 p 313 § 19; RRS § 10606.]

65.04.090 Further endorsements—Delivery. The recording officer must also endorse upon such an instrument, paper, or notice, the time when and the book and page in which it is recorded, and must thereafter electronically transmit or deliver it, upon request, to the party leaving the same for record or to the address on the face of the document. [1996 c 229 § 5; Code 1881 § 2732; RRS § 10607.]

65.04.110 Liability of auditor for damages. If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded is delivered or electronically transmitted

for record: (1) Neglects or refuses to record such instrument, paper or notice, within a reasonable time after receiving the same; or (2) records any instruments, papers or notices untruly, or in any other manner than as directed in this chapter; or, (3) neglects or refuses to keep in his or her office such indexes as are required by *this act, or to make the proper entries therein; or, (4) neglects or refuses to make the searches and to give the certificate required by *this act; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or, (5) alters, changes, or obliterates any records deposited in his or her office, or inserts any new matter therein; he or she is liable to the party aggrieved for the amount of damage which may be occasioned thereby. However, if the name or names and address hand printed, printed, or typewritten on any instrument, proved or acknowledged according to law, or on any paper or notice which may by law be filed or recorded, is or are incorrect, or misspelled or not the true name or names of the party or parties appearing thereon, the county auditor shall not, by reason of such fact, be liable for any loss or damage resulting therefrom. [1996 c 229 § 6; 1965 c 134 § 1; Code 1881 § 2734; RRS § 10609.]

***Reviser's note:** The language "this act" appears in Code 1881 c 211, codified herein as RCW 5.44.070, 36.16.030 through 36.16.050, 36.16.070, 36.16.080, 36.22.110 through 36.22.130, 36.22.150, 65.04.020, 65.04.030, 65.04.050 through 65.04.110, 65.04.130, and 65.04.140.

65.04.115 Names on documents, etc., to be printed or typewritten—Indexing. The name or names appearing on all documents or instruments, proved or acknowledged according to law, or on any paper which may by law be filed or recorded shall be hand printed, printed or typewritten so as to be legible and the county auditor shall index said documents and instruments in accordance with the hand printed, printed or typewritten name or names appearing thereon. [1965 c 134 § 2.]

65.04.130 Fees to be paid or tendered. Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are if demanded paid or tendered. [Code 1881 § 2735; RRS § 10610.]

65.04.140 Auditor as custodian of records. The county auditor in his capacity of recorder of deeds is sole custodian of all books in which are recorded deeds, mortgages, judgments, liens, incumbrances and other instruments of writing, indexes thereto, maps, charts, town plats, survey and other books and papers constituting the records and files in said office of recorder of deeds, and all such records and files are, and shall be, matters of public information, free of charge to any and all persons demanding to inspect or to examine the same, or to search the same for titles of property. It is said recorder's duty to arrange in suitable places the indexes of said books of record, and when practicable, the record books themselves, to the end that the same may be accessible to the public and convenient for said public inspection, examination and search, and not interfere with the said auditor's personal control and responsibility for

the same, or prevent him from promptly furnishing the said records and files of his said office to persons demanding any information from the same. The said auditor or recorder must and shall, upon demand, and without charge, freely permit any and all persons, during reasonable office hours, to inspect, examine and search any or all of the records and files of his said office, and to gather any information therefrom, and to make any desired notes or memoranda about or concerning the same, and to prepare an abstract or abstracts of title to any and all property therein contained. [1886 p 163 § 1; 1883 p 34 § 1; Code 1881 § 2736; RRS § 10611.]

Chapter 65.08 RECORDING

Sections

- 65.08.030 Recorded irregular instrument imparts notice.
- 65.08.050 Recording land office receipts.
- 65.08.060 Terms defined.
- 65.08.070 Real property conveyances to be recorded.
- 65.08.090 Letters patent.
- 65.08.095 Conveyances of fee title by public bodies.
- 65.08.100 Certified copies.
- 65.08.110 Certified copies—Effect.
- 65.08.120 Assignment of mortgage—Notice.
- 65.08.130 Revocation of power of attorney.
- 65.08.140 No liability for error in recording when properly indexed.
- 65.08.150 Duty to record.
- 65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.
- 65.08.170 Notice of additional water or sewer facility tap or connection charges—Required—Contents.
- 65.08.180 Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release.

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

Powers of appointment: Chapter 11.95 RCW.

65.08.030 Recorded irregular instrument imparts notice. An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force. [1953 c 115 § 1. Prior: 1929 c 33 § 8; RRS § 10599.]

65.08.050 Recording land office receipts. Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this section becomes a law, and every record hereafter

made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt or certificate in the land described in such receipt or certificate. [1890 p 92 § 1; RRS § 10613.]

65.08.060 Terms defined. (1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor of the county. [1984 c 73 § 1; 1927 c 278 § 1; RRS § 10596-1.]

65.08.070 Real property conveyances to be recorded. A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record. [1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

65.08.090 Letters patent. Letters patent from the United States or the state of Washington granting real property may be recorded in the office of the recording officer of the county where such property is situated in the same manner and with like effect as a conveyance that is entitled to be recorded. [1927 c 278 § 4; RRS § 10596-4.]

65.08.095 Conveyances of fee title by public bodies. Every conveyance of fee title to real property hereafter executed by the state or by any political subdivision or municipal corporation thereof shall be recorded by the

grantor, after having been reviewed as to form by the grantee, at the expense of the grantee at the time of delivery to the grantee, and shall constitute legal delivery at the time of filing for record. [1963 c 49 § 1.]

65.08.100 Certified copies. A copy of a conveyance of or other instrument affecting real property recorded or filed in the office of the secretary of state or the commissioner of public lands, or of the record thereof, when certified in the manner required to entitle the same to be read in evidence, may be recorded with the certificate in the office of any recording officer of the state. [1927 c 278 § 5; RRS § 10596-5.]

65.08.110 Certified copies—Effect. A copy of a record, when certified or authenticated to entitle it to be read in evidence, may be recorded in any office where the original instrument would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of the record of a conveyance of or other instrument affecting separate parcels of real property situated in more than one county, when certified or authenticated to entitle it to be read in evidence may be recorded in the office of the recording officer of any county in which any such parcel is situated with the same effect as though the original instrument were so recorded. [1927 c 278 § 6; RRS § 10596-6.]

65.08.120 Assignment of mortgage—Notice. The recording of an assignment of a mortgage is not in itself notice to the mortgagor, his heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage. [1927 c 278 § 7; RRS § 10596-7.]

65.08.130 Revocation of power of attorney. A power of attorney or other instrument recorded pursuant to RCW 65.08.060 through 65.08.150 is not deemed revoked by any act of the party by whom it was executed unless the instrument of revocation is also recorded in the same office in which the instrument granting the power was recorded. [1927 c 278 § 8; RRS § 10596-8.]

65.08.140 No liability for error in recording when properly indexed. A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page where the instrument is actually of record. [1927 c 278 § 9; RRS § 10596-9. Formerly RCW 65.04.120.]

65.08.150 Duty to record. A recording officer, upon payment or tender to him of the lawful fees therefor, shall record in his office any instrument authorized or permitted to be so recorded by the laws of this state or by the laws of the United States. [1943 c 23 § 1; 1927 c 278 § 10; RRS § 10596-10. Formerly RCW 65.04.010.]

65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form

provisions. A mortgage or deed of trust of real estate may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subdivision (1) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding. [1967 c 148 § 1.]

65.08.170 Notice of additional water or sewer facility tap or connection charges—Required—Contents. When any municipality as defined in RCW 35.91.020 or any county has levied or intends to levy a charge on property pertaining to:

(1) The amount required by the provisions of a contract pursuant to RCW 35.91.020 under which the water or sewer facilities so tapped into or used were constructed; or

(2) Any connection charges which are in fact reimbursement for the cost of facilities constructed by the sale of revenue bonds; or

(3) The additional connection charge authorized in RCW 35.92.025; such municipality or county shall record in the office in which deeds are recorded of the county or counties in which such facility is located a notice of additional tap or connection charges. Such notice shall contain either the legal description of the land affected by such additional tap or connection charges or a map making appropriate references to the United States government survey showing in outline the land affected or to be affected by such additional tap or connection charges. [1977 c 72 § 1.]

65.08.180 Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release. The notice required by RCW 65.08.170, when duly recorded, shall be effective until there is recorded in the same office in which the notice was recorded a certificate of payment and release executed by the municipality or county. Such certificate shall contain a legal description of the particular parcel of land so released and shall be recorded within thirty days of the date of payment thereof. [1977 c 72 § 2.]

Chapter 65.12

REGISTRATION OF LAND TITLES (TORRENS ACT)

Sections

- 65.12.005 Registration authorized—Who may apply.
- 65.12.010 Land subject to a lesser estate
- 65.12.015 Tax title land—Conditions to registration.
- 65.12.020 Application.
- 65.12.025 Various lands in one application.
- 65.12.030 Amendment of application.
- 65.12.035 Form of application.
- 65.12.040 Venuc—Power of the court.
- 65.12.050 Registrars of titles.
- 65.12.055 Bond of registrar.
- 65.12.060 Deputy registrar—Duties—Vacancy.
- 65.12.065 Registrar not to practice law—Liability for deputy.
- 65.12.070 Nonresident to appoint agent.
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- 65.12.790 Fees of registrar.
- 65.12.800 Disposition of fees.

Reviser's note: The lengthy captions set forth in the 1907 session law have been abandoned in favor of the shorter section captions published throughout this chapter.

65.12.005 Registration authorized—Who may apply. The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of said land registered. The application may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the county auditor in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant. [1907 c 250 § 1; RRS § 10622.]

Construction—1907 c 250: "This act shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is, that any owner of land may register his title and bring his land under the provisions of this act, but no one is required so to do." [1907 c 250 § 97.]

65.12.010 Land subject to a lesser estate. It shall not be an objection to bringing land under this chapter, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided. [1907 c 250 § 2; RRS § 10623.]

65.12.015 Tax title land—Conditions to registration. No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded, decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said times; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessment or special assessment for any such vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section. [1907 c 250 § 3; RRS § 10624.]

65.12.020 Application. The application shall be in writing and shall be signed and verified by the oath of the applicant, or the person acting in his behalf. It shall set forth substantially:

(1) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(2) Whether the applicant (except in the case of a corporation) is married or not, and, if married, the name and residence of the husband or wife, and the age of the applicant.

(3) The description of the land and the assessed value thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under RCW 65.12.670 and 65.12.790(1).

(4) The applicant's estate or interest in the same, and whether the same is subject to homestead exemption.

(5) The names of all persons or parties who appear of record to have any title, claim, estate, lien or interest in the lands described in the application for registration.

(6) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and post office address of each occupant, and what estate he has or claims in the land.

(7) Whether the land is subject to any lien or incumbrance, and if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and post office address of each holder thereof.

(8) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and if any, set forth the name and post office address of every such person and the nature of his estate or claim.

(9) In case it is desired to settle or establish boundary lines, the names and post office addresses of all the owners of the adjoining lands that may be affected thereby, as far as he is able, upon diligent inquiry, to ascertain the same.

(10) If the application is on behalf of a minor, the age of such minor shall be stated.

(11) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant will also state that upon diligent inquiry he had been unable to ascertain the same. [1907 c 250 § 4; RRS § 10625.]

65.12.025 Various lands in one application. Any number of contiguous pieces of land in the same county, and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application. [1907 c 250 § 5; RRS § 10626.]

65.12.030 Amendment of application. The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application. [1907 c 250 § 6; RRS § 10627.]

65.12.035 Form of application. The form of application may, with appropriate changes, be substantially as follows:

FORM OF APPLICATION FOR INITIAL REGISTRATION OF TITLE TO LAND

Notary Public in and for the state of Washington, residing at

State of Washington, County of ss.

[1907 c 250 § 7; RRS § 10628.]

In the superior court of the state of Washington in and for county.

In the matter of the application of to register the title to the land hereinafter described } PETITION

To the Honorable judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

65.12.040 Venue—Power of the court. The application for registration shall be made to the superior court of the state of Washington in and for the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons, known, or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title. [1907 c 250 § 8; RRS § 10629.]

First. Name of applicant, age, years. Residence, (number and street, if any). Married to (name of husband or wife). Second. Applications made by, acting as (owner, agent or attorney). Residence, (number, street).

65.12.050 Registrars of titles. The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the superior court having jurisdiction of the county in which they act. [1907 c 250 § 9; RRS § 10630.]

Third. Description of real estate is as follows: estate or interest therein is and subject to homestead.

65.12.055 Bond of registrar. Every county auditor shall, before entering upon his duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do; said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office. [1907 c 250 § 10; RRS § 10631.]

Fourth. The land is occupied by (names of occupants), whose address is (number street and town or city). The estate, interest or claim of occupant is

Fifth. Liens and incumbrances on the land Name of holder or owner thereof is Whose post office address is Amount of claim, \$. Recorded, Book, page, of the records of said county.

65.12.060 Deputy registrar—Duties—Vacancy. Deputy registrars shall perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county auditor. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill. [1907 c 250 § 11; RRS § 10632.]

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are whose addresses are respectively. Character of estate, interest or claim is

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

(Applicant's signature) By agent, attorney, administrator or guardian. Subscribed and sworn to before me this day of, A.D. 19.

65.12.065 Registrar not to practice law—Liability for deputy. No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in

any proceeding herein provided for, nor while in the office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar, in the same manner as for his own personal neglect or omission. [1907 c 250 § 12; RRS § 10633.]

65.12.070 Nonresident to appoint agent. If the applicant is not a resident of the state of Washington, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and post office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the applicant shall at once make another appointment in like manner, and if he fails so to do, the court may dismiss the application. [1907 c 250 § 14; RRS § 10635.]

65.12.080 Filing application—Docket and record entries. The application shall be filed in the office of the clerk of the court to which the application is made and in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "land registration docket". The record entry of the application shall be entitled (name of applicant), plaintiff, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, incumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession or to have any lien, incumbrance, right, title or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein, defendants.

All orders, judgments and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket. [1907 c 250 § 15; RRS § 10636.]

65.12.085 Filing abstract of title. The applicant shall also file with the said clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared and certified to by the county auditor of the county, or a person, firm or corporation regularly engaged in the abstract business, and having satisfied the said superior court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this chapter. [1907 c 250 § 15a; RRS § 10637.]

65.12.090 Examiner of titles—Appointment—Oath—Bond. The judges of the superior court in and for the state of Washington for the counties for which they were elected or appointed shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge

of the superior court of the state of Washington in and for that county shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the said superior court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar. [1907 c 250 § 13; RRS § 10634.]

65.12.100 Copy of application as lis pendens. At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed (but need not be recorded) in the office of the county auditor, and shall have the force and effect of a lis pendens. [1907 c 250 § 16; RRS § 10638.]

65.12.110 Examination of title. Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and, also as to all judgments against the applicant or those through whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court. [1907 c 250 § 17; RRS § 10639.]

65.12.120 Summons to issue. If, in the opinion of the examiner, the applicant has a title, as alleged, and proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially in the form hereinafter provided. The summons shall be issued by the order of the court and attested by the clerk of the court. [1907 c 250 § 18; RRS § 10640.]

65.12.125 Summons—Form. The summons provided for in RCW 65.12.135 shall be in substance in the form following, to wit:

SUMMONS ON APPLICATION FOR
REGISTRATION OF LAND

State of Washington, }
County of . . . , } ss.

In the superior court of the state of Washington in and for the county of (name of applicant), plaintiff,

....., versus (names of all defendants), and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate, described in the application herein defendants.

The state of Washington to the above-named defendants, greeting:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above entitled application for registration of the following land situate in county, Washington, to wit: (description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application herein.

Witness,, clerk of said court and the seal thereof, at, in said county and state, this day of, A.D. 19. .

(Seal.) Clerk.

[1907 c 250 § 206; RRS § 10644.]

65.12.130 Parties to action. The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, incumbrance, right, title, or interest in the land, and all other persons who shall be designated as follows, viz: "All other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," shall be and shall be known as defendants. [1907 c 250 § 19; RRS § 10641.]

65.12.135 Service of summons. The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service; and the summons shall be served as is now provided for the service of summons in civil actions in the superior court in this state, except as herein otherwise provided. The summons shall be served upon nonresident defendants and upon "all such unknown persons or parties," defendant, by publishing the summons in a newspaper of general circulation in the county where the application is filed, once in each week for three consecutive weeks, and the service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication, provided that if any named defendant assents in writing to the registration as prayed for, which assent shall be endorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon the defendant shall be necessary. [1985 c 469 § 60; 1907 c 250 § 20; RRS § 10642.]

65.12.140 Copy mailed to nonresidents—Proof—Expense. The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by mail to such defendants who are not residents of the state whose place of address is known or stated in the application, and whose appearance is not entered and who are not in

person served with the summons. The certificate of the clerk that he has sent such notice, in pursuance of this section, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions. [1907 c 250 § 20a; RRS § 10643.]

65.12.145 Guardians ad litem. The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an interest in the land. The compensation of the said guardian shall be determined by the court, and paid as a part of the expense of the proceeding. [1907 c 250 § 21; RRS § 10645.]

65.12.150 Who may appear—Answer. Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. [1907 c 250 § 22; RRS § 10646.]

65.12.155 Judgment by default—Proof. If no person appears and answers within the time named in the summons, or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing, upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, lien, or interest in, to, or upon the real estate described in the application herein", all the world are made parties defendant, and shall be concluded by the default, order and decree. The court shall not be bound by the report of the examiners of title, but may require other or further proof. [1907 c 250 § 23; RRS § 10647.]

65.12.160 Cause set for trial—Default—Referral. If, in any case an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear and answer in the manner provided in RCW 65.12.155. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a referee appointed by the said superior court under the laws of this state now in force, and relating to the appointment, duties and powers of referees. [1907 c 250 § 24; RRS § 10648.]

65.12.165 Court may require further proof. The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in RCW

65.12.160, and require such other and further proof by either of the parties to the cause as to the court shall seem meet and proper. [1907 c 250 § 25; RRS § 10649.]

65.12.170 Application dismissed or withdrawn. If, in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time, before the final decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made by the court. [1907 c 250 § 26; RRS § 10650.]

65.12.175 Decree of registration—Effect—Appellate review. If the court, after hearing, finds that the applicant has title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land, and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application, or included in "all other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein", and such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law, or in equity, for reversing judgments or decrees, except as herein especially provided. Appellate review of the court's decision may be sought as in other civil actions. [1988 c 202 § 56; 1971 c 81 § 132; 1907 c 250 § 27; RRS § 10651.]

Severability—1988 c 202: See note following RCW 2.24.050.

65.12.180 Rights of persons not served. Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof, may at any time within ninety days after the entry of such decree, and not afterwards, appear and file his sworn answer to such application in like manner as hereinbefore prescribed for making answer: PROVIDED, HOWEVER, That such person had no actual notice or information of the filing of such application or the pendency of the proceedings during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of some one in his behalf having knowledge of the facts, and PROVIDED, ALSO, that no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided; but any person aggrieved by such decree in any case may pursue his remedy by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree; and may also bring his action for indemnity as hereinafter provided. Upon the filing of such answer, and not less than ten days' notice having been given to the applicant, and to such other interested parties as the court may order in such manner as shall be directed by the court, the court shall proceed to

review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings, and shall make such order in the case as shall be equitable in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title within a like time, and in a like manner, as in the case of an original decree under this chapter, and not otherwise. [1907 c 250 § 28; RRS § 10652.]

65.12.190 Limitation of actions. No person shall commence any proceeding for the recovery of lands or any interest, right, lien or demand therein or upon the same adverse to the title or interest as found, or decreed in the decree of registration, unless within ninety days after the entry of the order or decree; and this section shall be construed as giving such right of action to such person only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree. [1907 c 250 § 29; RRS § 10653.]

65.12.195 Title free from incumbrances—Exceptions. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances except only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office, and except any of the following rights or incumbrances subsisting, namely:

(1) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.

(2) All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate. And any subsisting right of way or other easement, for ditches or water rights, upon, over or in respect to the land.

(3) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

(4) Such right of appeal, or right to appear and contest the application, as is allowed by this chapter. And,

(5) Liens, claims or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and county auditor. [1907 c 250 § 30; RRS § 10654.]

65.12.200 Decree—Contents—Filing. Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the judge of the superior court of the state of Washington in and for the county in which the land is situated; it shall state whether the owner is married or unmarried, and if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements,

liens, attachments, homesteads and other incumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other matter or information properly to be determined by the court in pursuance of this chapter. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as hereinafter provided by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles. [1907 c 250 § 31; RRS § 10655.]

65.12.210 Interest acquired after filing application.

Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the county auditor, shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court. [1907 c 250 § 32; RRS § 10656.]

65.12.220 Registration—Effect. The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, subject to the provisions of this chapter and of all acts amendatory thereof, unless the same shall be withdrawn from registration in the manner hereinafter provided. All dealings with the land or any estate or interest therein after the same has been brought under this chapter, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this chapter, so long as said land shall remain registered land and until the same shall be withdrawn from registration in the manner hereinafter provided. [1917 c 62 § 1; 1907 c 250 § 33; RRS § 10657.]

65.12.225 Withdrawal authorized—Effect. The owner or owners of any lands, the title to which has been or shall hereafter be registered in the manner provided by law, shall have the right to withdraw said lands from registration in the manner hereinafter provided, and after the same have been so withdrawn from registration, shall have the right to contract concerning, convey, encumber or otherwise deal with the title to said lands as freely and to the same extent and in the same manner as though the title had not been registered. [1917 c 62 § 2; RRS § 10658.]

65.12.230 Application to withdraw. The owner or owners of registered lands, desiring to withdraw the same from registration, shall make and file with the registrar of titles in the county in which said lands are situated, an application in substantially the following form:

To the registrar of titles in the county of, state of Washington:

I, (or we),, the undersigned registered owner . . . in fee simple of the following described real property situated in the county of, state of Washington, to wit: (here insert the description of the property), hereby

make application to have the title to said real property withdrawn from registration.

Witness my (or our) hand . . . and seal . . . this . . . day of, 19.

Applicant's signature.

Said application shall be acknowledged in the same manner as is required for the acknowledgment of deeds. [1917 c 62 § 3; RRS § 10659.]

65.12.235 Certificate of withdrawal. Upon the filing of such application and the payment of a fee of five dollars, the registrar of titles, if it shall appear that the application is signed and acknowledged by all the registered owners of said land, shall issue to the [applicant] a certificate in substantially the following form:

This is to certify, That the owner (or owners) in fee simple of the following described lands situated in the county of, state of Washington, the title to which has been heretofore registered under the laws of the state of Washington, to wit: (here insert description of the property), having heretofore filed his (or their) application for the withdrawal of the title to said lands from the registry system; NOW, THEREFORE, The title to said above described lands has been withdrawn from the effect and operation of the title registry system of the state of Washington and the owner (or owners) of said lands is (or are) by law authorized to contract concerning, convey, encumber or otherwise deal with the title to said lands in the same manner and to the same extent as though said title had never been registered.

Witness my hand and seal this day of, 19.

Registrar of Titles for county.

[1973 c 121 § 1; 1917 c 62 § 4; RRS § 10660.]

65.12.240 Effect of recording. The person receiving such certificate of withdrawal shall record the same in the record of deeds in the office of the county auditor of the county in which the lands are situated and thereafter the title to said lands shall be conveyed or encumbered in the same manner as the title to lands that have not been registered. [1917 c 62 § 5; RRS § 10661.]

65.12.245 Title prior to withdrawal unaffected. *This act shall not be construed to disturb the effect of any proceedings under said registry system, wherein the question of title to said real property has been determined, but all proceedings had in connection with the registering of said title, relating to the settlement or determination of said title, prior to such withdrawal, shall have the same force and effect as if said title still remained under said registry system. [1917 c 62 § 6; RRS § 10662.]

*Reviser's note: The language "This act" appears in 1917 c 62 modified herein as RCW 65.12.220 through 65.12.245.

65.12.250 Entry of registration—Records. Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to

register the title or interest pursuant to the terms of the decree in the manner herein provided. The registrar shall keep a book known as the "Register of Titles", wherein he shall enter all first and subsequent original certificates of title by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this chapter shall be deemed to include all memorials and notations thereon. [1907 c 250 § 34; RRS § 10663.]

65.12.255 Certificate of title. The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all incumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration filed with the registrar of titles as hereinbefore provided; and shall be in form substantially as follows:

FIRST CERTIFICATE OF TITLE

Pursuant to order of the superior court of the state of Washington, in and for county.

State of Washington, }
County of } ss.

This is to certify that A. B. of county of, state of, is now the owner of an estate (describe the estate) of, and in (describe the land), subject to the incumbrances, liens and interests noted by the memorial underwritten or indorsed thereon, subject to the exceptions and qualifications mentioned in the thirtieth section of "An Act relating to the registration and confirmation of titles to land," in the session laws of Washington for the year 1907 [RCW 65.12.195]. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this day of, A.D. 19.
(Seal)
Registrar of Titles.

[1907 c 250 § 35; RRS § 10664.]

65.12.260 Owner's certificate—Receipt. The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words "Owner's duplicate certificate of ownership", and deliver the same to the owner or to his attorney duly au-

thorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it shall be the duty of the registrar to take from the owner, in every case where it is practicable so to do, his receipt for the certificate of title which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature. [1907 c 250 § 36; RRS § 10665.]

65.12.265 Tenants in common. Where two or more persons are registered owners as tenants in common or otherwise, one owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share. [1907 c 250 § 37; RRS § 10666.]

65.12.270 Subsequent certificates. All certificates subsequent to the first shall be in like form, except that they shall be entitled: "Transfer from No.", (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the day of, 19., and entered in the book at page of register." [1907 c 250 § 38; RRS § 10667.]

65.12.275 Exchange of certificates—Platting land. A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide such land into lots, blocks or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered. [1907 c 250 § 39; RRS § 10668.]

65.12.280 Effective date of certificate. The certificate of title shall relate back to and take effect as of the date of the decree of registration. [1907 c 250 § 40; RRS § 10669.]

65.12.290 Certificate of title as evidence. The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy, and authenticated by his seal and also the owner's duplicate certificate shall be received as evidence in all the courts of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this chapter. In case of a variance between the

owner's duplicate certificate and the original certificate, the original shall prevail. [1907 c 250 § 41; RRS § 10670.]

65.12.300 Indexes and files—Forms. The registrar of titles, under the direction of the court, shall make and keep indexes of all duplication and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect. [1907 c 250 § 42; RRS § 10671.]

65.12.310 Tract and alphabetical indexes. The registrar of titles shall keep tract indexes, in which shall be entered the lands registered in the numerical order of the townships, ranges, sections, and in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be entered, in alphabetical order, the names of all registered owners, and all other persons interested in, or holding charges upon, or any interest in, the registered land, with a reference to the volume and page of the register of titles in which the land is registered. [1907 c 250 § 43; RRS § 10672.]

65.12.320 Dealings with registered land. The owner of registered land may convey, mortgage, lease, charge or otherwise incumber, dispose of or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages and leases or voluntary instruments, like those now in use, and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease, for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance, or bind the land; but shall operate only as a contract between the parties, and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. [1907 c 250 § 44; RRS § 10673.]

65.12.330 Registration has effect of recording. Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would, under existing law, if recorded, filed or entered in the office of the county clerk, and county auditor, of the county in which the real estate is situate, affect the said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing or entering. [1907 c 250 § 45; RRS § 10674.]

65.12.340 Filing—Numbering—Indexing—Public records. The registrar of titles shall number and note in a proper book to be kept for that purpose, the year, month, day, hour and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, or all other instruments, or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles, and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers, relating to registered land, in the office of the registrar of titles shall be open to public inspection, in the same manner as are now the papers and records in the office of the county clerk and county auditor. [1907 c 250 § 46; RRS § 10675.]

65.12.350 Duplicate of instruments certified—Fees. Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar of titles, may be presented with the originals, and shall be attested and sealed by the registrar of titles, and indorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles, on the payment of a fee of the same amount as is now allowed the county clerk and county auditor, for a like certified copy. [1907 c 250 § 47; RRS § 10676.]

65.12.360 New certificate—Register of less than fee—When form of memorial in doubt. No new certificate shall be entered or issued upon any transfer of registered land, which does not divest the title in fee simple of said land or some part thereof, from the owner or some one of the registered owners. All interest in the registered land, less than a freehold estate, shall be registered by filing with the registrar of titles, the instruments creating, transferring or claiming such interest, and by a brief memorandum or memorial thereof, made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum, or memorial, shall also be made on the owner's duplicate.

The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument, (voluntary or involuntary), presented for registration, or where the registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles, or upon the demand in writing of any party in interest.

The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar

of titles shall make registration in accordance therewith. [1907 c 250 § 48; RRS § 10677.]

65.12.370 Owner's certificate to be produced when new certificate issued. No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title, in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this chapter, or upon the order of the court for cause shown; and whenever such order is made a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles, to enter a new certificate, or to make a memorial of registration in accordance with such instrument; and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith. [1907 c 250 § 49; RRS § 10678.]

65.12.375 Owner's duplicate certificate. In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularity, the facts relating to such loss, mislaying or destruction, and shall file the same in the office of the registrar of titles.

Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavits, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate, such new owner's duplicate certificate shall be printed or marked, "Certified copy of owner's duplicate certificate", and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate. [1907 c 250 § 50; RRS § 10679.]

65.12.380 Conveyance of registered land. An owner of registered land, conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time and shall be by the registrar marked "Canceled". The original certificate of title shall also be marked "Canceled". The registrar of titles shall thereupon entered in the register of titles, a new certificate of title to the grantee, and shall prepare and deliver to such grantee an owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except insofar as they may be simultaneously released or discharged.

When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferor, a new certificate shall be issued to him, for the part, estate or interest remaining in him. [1907 c 250 § 51; RRS § 10680.]

65.12.390 Certificate of tax payment. Before any deed, plat or other instrument affecting registered land shall be filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid. [1907 c 250 § 52; RRS § 10681.]

65.12.400 Registered land charged as other land. Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing contained in this chapter shall in any way be construed to relieve registered land, or the owners thereof, from any rights incident to the relation of husband and wife, or from liability to attachment of mesne process, or levy on execution, or from liability from any lien of any description established by law on land or the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy, under the provisions of law relating thereto; or to change or affect in any way, any other rights or liabilities, created by law, applicable to unregistered land, except as otherwise expressly provided in this chapter, or any amendments hereof. [1907 c 250 § 53; RRS § 10682.]

65.12.410 Conveyances by attorney in fact. Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner. [1907 c 250 § 54; RRS § 10683.]

65.12.420 Encumbrances by owner. The owner of registered land may mortgage or encumber the same, by executing a trust deed or other instrument, sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released, in whole or in part, or otherwise dealt with by the mortgagee, by any form of instrument sufficient in law for the purpose; but such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the encumbrance, shall be registered, and shall take effect upon the title only from the time of registration. [1907 c 250 § 55; RRS § 10684.]

65.12.430 Registration of mortgages. A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial of the purport of the instrument registered, the time of filing, and the file number of the registered instrument. He shall also note upon the instrument registered, the time of filing, and a reference to the volume and page of the register of

titles, wherein the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except that the words, "Mortgagee's duplicate", shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title. [1907 c 250 § 56; RRS § 10685.]

65.12.435 Dealings with mortgages. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate, and upon the original certificate of title. When the mortgage is discharged, or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped, "Canceled". In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made by a memorial according in like manner as before provided for a release or discharge.

The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof, in the auditor's office, and such discharge shall be attested by the registrar of titles. [1907 c 250 § 57; RRS § 10686.]

65.12.440 Foreclosures on registered land. All charges upon registered land, or any estate or interest in the same, and any right thereunder, may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage, or any charge, shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register, at the time of, or prior to, the commencement of such suit, or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate. [1907 c 250 § 58; RRS § 10687.]

65.12.445 Registration of final decree—New certificate. In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the original certificates of title, and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any there be outstanding. When the registered

owner of such land is, by such judgment or decree, divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land, or that part thereof, designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title, and issue a new owner's duplicate, in such manner as is provided in the case of voluntary conveyance: PROVIDED, HOWEVER, That no such new certificate of title shall be entered, except upon the order of the superior court of the county in which the land is situated, and upon the filing in the office of the registrar of titles, an order of the court directing the entry of such new certificate. [1907 c 250 § 59; RRS § 10688.]

65.12.450 Title on foreclosure—Registration. Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land, or any part thereof, shall be entitled to have his title registered, and the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof, of which the applicant is the owner, and issue an owner's duplicate, in such manner as in the case of a voluntary conveyance of registered land: PROVIDED, HOWEVER, No such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired, and upon the filing in the office of the registrar of titles, an order of the superior court of the county directing the entry of such new certificates. [1907 c 250 § 60; RRS § 10689.]

65.12.460 Petition for new certificate. In all cases wherein, by this chapter, it is provided that a new certificate of title to registered land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts; and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto. [1907 c 250 § 61; RRS § 10690.]

65.12.470 Registration of leases. Leases for registered land, for a term of three years or more, shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages, shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words, "Lessee's duplicate", shall be written or printed upon it in large letters diagonally across its face. [1907 c 250 § 62; RRS § 10691.]

65.12.480 Instruments with conditions. Whenever a deed, or other instrument, is filed in the office of the registrar of titles, for the purpose of effecting a transfer of or charge upon the registered land, or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition, limitation or other equitable interest shall not be entered upon the certificate of title by memorial, but a

memorandum or memorial shall be entered by the words, "in trust", or "upon condition", or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

No transfer of, or charge upon, or dealing with, the land, estate or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles, directing such transfer, charge, or dealing, in accordance with the true intent and meaning of the trust, condition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right; and those claiming under him, in good faith, and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation. [1907 c 250 § 63; RRS § 10692.]

65.12.490 Transfers between trustees. When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him, and shall be registered in like manner as upon an original conveyance in trust. [1907 c 250 § 64; RRS § 10693.]

65.12.500 Trustee may register land. Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust. [1907 c 250 § 65; RRS § 10694.]

65.12.510 Creation of lien on registered land. In every case where writing of any description, or copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the registrar of titles, in the county in which the land lies, and, in addition to any particulars required in such papers, for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected. [1907 c 250 § 66; RRS § 10695.]

65.12.520 Registration of liens. All attachments, liens and rights, of every description, shall be enforced, continued, reduced, discharged and dissolved, by any proceeding or method, sufficient and proper in law to enforce, continue, reduce, discharge or dissolve, like liens or unregistered land. All certificates, writing or other instruments, permitted or required by law, to be filed or recorded, to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments, liens or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge or dissolution, shall in the case of like attachments, liens or other rights upon registered land, be filed with the registrar of titles, and registered in the register of titles, in lieu of filing or recording. [1907 c 250 § 67; RRS § 10696.]

65.12.530 Entry as to plaintiff's attorney. The name and address of the attorney for the plaintiff in every action affecting the title to registered land, shall, in all cases, be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff. [1907 c 250 § 68; RRS § 10697.]

65.12.540 Decree. A judgment, decree, or order of any court shall be a lien upon, or affect registered land, or any estate or interest therein, only when a certificate under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected. [1907 c 250 § 69; RRS § 10698.]

65.12.550 Title acquired on execution. Any person who has acquired any right, interest or estate in registered land by virtue of any execution, judgment, order or decree of the court, shall register his title so acquired, by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title, registered in him, in the same manner as is provided in the case of persons acquiring title by an action or proceeding in foreclosure of mortgages. [1907 c 250 § 70; RRS § 10699.]

65.12.560 Termination of proceedings. The certificate of the clerk of the court in which any action or proceeding shall be pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate. [1907 c 250 § 71; RRS § 10700.]

65.12.570 Land registered only after redemption period. Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered, until the time within which the land may be redeemed has expired. At any time after the time to redeem shall have expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order, and hearing, grant and make an order directing the entry of such new certificate of title. [1907 c 250 § 72; RRS § 10701.]

65.12.580 Registration on inheritance. The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this chapter, on the expiration of thirty days after the entry of the decree of the superior court granting letters testamentary or of administration, or, in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree, of the superior court having jurisdiction, and of the will, if any, with the clerk of the superior court, in the county in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern; and after hearing, may direct the entry of a new certificate or certificates to the person or persons who appear to be entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner, in the superior courts, shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the superior court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates, stating that the estate is in the course of settlement, and the court, after such notice as it may order, and a hearing, may grant the petition: PROVIDED, HOWEVER, That the liability of registered land to be sold for claims against the estate of the deceased, shall not in any way be diminished or changed. [1907 c 250 § 73; RRS § 10702.]

65.12.590 Probate court may direct sale of registered land. Nothing contained in this chapter shall include, affect or impair the jurisdiction of the superior court to order an executor, administrator or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee, taking a deed or mortgage executed in pursuance of such order of the superior court, shall be entitled to register his title, and to the entry of a new certificate of title or memorial of registration, upon application to the superior court, and upon filing in the office of the registrar of titles, an order of said court, directing the entry of such certificates. [1907 c 250 § 74; RRS § 10703.]

65.12.600 Trustees and receivers. An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by the court, shall file in the office of the registrar of titles, the instrument or instruments by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, is authorized to deal with such land, estate or interest, and, if it is in the power of such person, he shall, at the same time, present to the registrar of titles, the owner's duplicate certificate of title;

thereupon the registrar shall enter upon the register of titles, and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person may, subject to the direction of the court, deal with or transfer such land as if he were a registered owner. [1907 c 250 § 75; RRS § 10704.]

65.12.610 Eminent domain—Reversion. Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right shall pay all fees on account of any memorial or registration or entry of new certificates, or duplicate thereof, and fees for the filing of instruments required by this chapter to be filed. When, for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order, and hearing, may order the entry of a new certificate of title to him. [1907 c 250 § 76; RRS § 10705.]

65.12.620 Registration when owner's certificate withheld. In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner, or any person withholding the duplicate certificate, to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If, in any case, the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if, for any reason, the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same, and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate. If in any case of an outstanding mortgagee's or lessee's duplicate certificate shall be withheld or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's withholding or refusing to deliver the duplicate receipt. [1907 c 250 § 77; RRS § 10706.]

65.12.630 Reference to examiner of title. In all cases where, under the provisions of this chapter, application is made to the court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner, as is herein provided for the reference of the application for registration. [1907 c 250 § 78; RRS § 10707.]

65.12.635 Examiner of titles. Examiners of titles shall, upon the request of the registrar of titles, advise him

upon any act or duty pertaining to the conduct of his office, and shall, upon request, prepare the form of any memorial to be made or entered by the registrar of titles. The examiner of titles shall have full power to administer oaths and examine witnesses involved in his investigation of titles. [1907 c 250 § 79; RRS § 10708.]

65.12.640 Registered instruments to contain names and addresses—Service of notices. Every writing and instrument required or permitted by this chapter to be filed for registration, shall contain or have endorsed upon it, the full name, place of residence and post office address of the grantee or other person requiring or claiming any right, title or interest under such instrument. Any change in residence or post office address of such person shall be endorsed by the registrar of titles in the original instrument, on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by, or given in pursuance of the provisions of this chapter by the registrar of titles or by the court, after original registration, shall be served upon the person to be notified; if a resident of the state of Washington, as summons in civil actions are served; and proof of such service shall be made as on the return of a summons. All such notices shall be sent by mail, to the person to be notified, if not a resident of the state of Washington, and his residence and post office address, as stated in the certificate of title, or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served, by mailing the same, as aforesaid, shall be conclusive proof of such notice: PROVIDED, HOWEVER, That the court may, in any case, order different or further service by publication or otherwise. [1907 c 250 § 80; RRS § 10709.]

65.12.650 Adverse claims—Procedure. Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this chapter for registering the same, make a statement in writing, setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration, as an adverse claim; and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall enter such decree thereon as equity and justice may require.

If the claim is adjudged to be invalid, its registration shall be canceled. The court may, in any case, award such costs and damages, including reasonable attorneys' fees, as it may deem just in the premises. [1907 c 250 § 81; RRS § 10710.]

65.12.660 Assurance fund. Upon the original registration of land under this chapter, and also upon the entry of the certificate showing title as registered owners in

heirs or devisees, there shall be paid to the registrar of titles, one-fortieth of one percent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund. [1973 1st ex.s. c 195 § 75; 1907 c 250 § 82; RRS § 10711.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

65.12.670 Investment of fund. All sums of money received by the registrar as provided for in RCW 65.12.660, shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies, for the purpose of an assurance fund, under the terms of this chapter; it shall be the duty of the county treasurer, whenever the amount on hand in said assurance fund is sufficient, to invest the same, principal and income, and report annually to the superior court of the same county the condition and income thereof; and no investment of the funds, or any part thereof, shall be made without the approval of said court, by order entered of record. Said fund shall be invested only in bonds or securities of the United States, or of one of the states of the United States, or of the counties or other municipalities of this state. [1907 c 250 § 83; RRS § 10712.]

65.12.680 Recoveries from fund. Any person sustaining loss or damage, through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court, or any deputy, in the performance of their respective duties, under the provisions of this chapter, and any person wrongfully deprived of any land or any interest therein, through the bringing of the same, under the provisions of this chapter, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry, or memorial, in the register of titles, or by any cancellation, and who, by the provisions of this chapter, is barred or precluded from bringing any action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which such land is situated, for the recovery of damages to be paid out of the assurance fund. [1907 c 250 § 84; RRS § 10713.]

65.12.690 Parties defendant—Judgment—Payment—Duties of county attorney. If such action be for recovery for loss or damage arising only through any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or any clerk of court or his deputy, in the performance of their respective duties, under the provisions of this chapter, then the county treasurer shall be the sole defendant to such action; but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar or his deputies, the examiners of title, the clerk of the court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omission, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk of the court or his deputies, then such action shall be brought against both the county treasurer and such persons or persons aforesaid. In all such actions, where there are

defendants other than the county treasurer, and damages shall have been recovered, no final judgment shall be entered against the county treasurer, until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity [assurance] fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer, for the amount of the execution and costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It shall be the duty of the county attorney to appear and defend all such actions. If the funds in the assurance funds at any time are insufficient to pay any judgment in full, the balance unpaid shall draw interest at the legal rate of interest, and be paid with such interest out of the first funds coming into said fund. [1907 c 250 § 85; RRS § 10714.]

65.12.700 When fund not liable—Maximum liability. The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale, in a mortgage or a trust deed. Final judgment shall not be entered against the county treasurer in any action against this chapter to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund, on account of the same real estate. [1907 c 250 § 86; RRS § 10715.]

65.12.710 Limitation of actions. No action or proceeding for compensation for or by reason of any deprivation, loss or damage occasioned or sustained as provided in this chapter, shall be made, brought or taken, except within the period of six years from the time when right to bring or take such action or proceeding first accrued; except that if, at any time, when such right of action first accrues, the person entitled to bring such action, or take such proceeding, is under the age of eighteen years, or insane, imprisoned, or absent from the United States in the service of the United States, or of this state, then such person, or anyone claiming from, by, or under him, may bring the action, or take the proceeding, at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired. [1971 ex.s. c 292 § 49; 1907 c 250 § 87; RRS § 10716.]

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

65.12.720 Proceeding to change records. No erasure, alteration or amendment shall be made upon the register of titles after the entry of the certificate of title, or a memorial thereon, and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner, or other person in interest, may at any time apply by petition to the court, on the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have determined and ceased; or that new interests have arisen or been created, which do not

appear upon the certificate; or that an error, omission or mistake was made in entering the certificate; or any memorial thereon, or any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered, has married, that the marriage has been terminated, or that a corporation which owned registered land has been dissolved, and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after such notice as it may order, to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: PROVIDED, HOWEVER, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [1907 c 250 § 88; RRS § 10717.]

65.12.730 Certificate subject of larceny—Penalty. Certificates of title or duplicate certificates entered under this chapter, shall be subjects of larceny, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of grand larceny, and punished accordingly. [1907 c 250 § 89; RRS § 10718.]

65.12.740 Perjury—Penalty. Whoever knowingly swears falsely to any statement required by this chapter to be made under oath shall be guilty of perjury, and shall be liable to the statutory penalties therefor. [1907 c 250 § 90; RRS § 10719.]

65.12.750 Fraud—False entries—Penalty. Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both such fine and imprisonment, in the discretion of the court. [1907 c 250 § 91; RRS § 10720.]

65.12.760 Forgery—Penalty. Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature or handwriting of any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his signature; or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document

upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a felony, and upon conviction shall be imprisoned in the penitentiary not exceeding ten years, or fined not exceeding one thousand dollars, or both fined and imprisoned, in the discretion of the court. [1907 c 250 § 92; RRS § 10721.]

65.12.770 Civil actions unaffected. No proceeding or conviction for any act hereby declared to be a felony, shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law, or in equity, against the person who has committed such act, or against his estate. [1907 c 250 § 93; RRS § 10722.]

65.12.780 Fees of clerk. On the filing of any application for registration, the applicant shall pay to the clerk of the court filing fees as set in RCW 36.18.016. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles. [1995 c 292 § 19; 1907 c 250 § 94; RRS § 10723.]

65.12.790 Fees of registrar. The fees to be paid to the registrar of titles shall be as follows:

(1) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay, to the registrar, on all land having an assessed value, exclusive of improvements, of one thousand dollars or less, thirty-one and one-quarter cents on each one thousand dollars, or major fraction thereof, of the assessed value of said land, additional.

(2) For granting certificates of title, upon each applicant, and registering the same, two dollars.

(3) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificate of title, ten dollars.

(4) When the land transferred is held upon any trust, condition, or limitation, an additional fee of three dollars.

(5) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and endorsements upon duplicate certificates, three dollars.

(6) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, three dollars.

(7) For filing copy of will, with letters testamentary, or filing copy of letters of administration, and entering memorial thereof, two dollars and fifty cents.

(8) For the cancellation of each memorial, or charge, one dollar.

(9) For each certificate showing the condition of the register, one dollar.

(10) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county clerks and county auditors for like service.

(11) For any other service required, or necessary to carry out this chapter, and not hereinbefore itemized, such fee or fees as the court shall determine and establish.

(12) For registration of each mortgage and issuance of duplicate of title a fee of five dollars; for each deed of trust and issuance of duplicate of title a fee of eight dollars. [1973 1st ex.s. c 195 § 76; 1973 c 121 § 2; 1907 c 250 § 95; RRS § 10724.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

65.12.800 Disposition of fees. One-half of all fees provided for in RCW 65.12.790(1), shall be collected by the registrar, and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county; and all the remaining fees provided for in said section, and all the subdivisions thereof, shall be collected by the registrar, and applied the same as the other fees of his office; but his salary as county clerk or county auditor, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for herein; and the said registrar, as such, shall receive no salary. [1907 c 250 § 96; RRS § 10725.]

Chapter 65.16

LEGAL PUBLICATIONS

Sections

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

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65.16.010 Weekly publication—How made. The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [1893 c 127 § 27; RRS § 253.]

65.16.020 Qualifications of legal newspaper. The qualifications of a legal newspaper are that such newspaper

shall have been published regularly, at least once a week, in the English language, as a newspaper of general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; and shall hold a second class mailing permit: PROVIDED, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: PROVIDED, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified. [1961 c 279 § 1; 1941 c 213 § 3; 1921 c 99 § 1; Rem. Supp. 1941 § 253-1. Prior: 1917 c 61 § 1.]

65.16.030 Affidavit of publication—Presumption.

All legal and other official notices shall be published in a legal newspaper as herein defined, and the affidavit of publication shall state that the newspaper has been approved as a legal newspaper by order of the superior court of the county in which it is published, and shall be prima facie evidence of that fact. Wherever a legal notice, publication, advertisement or other official notice is required to be published by any statute or law of the state of Washington, the proof of such publication shall be the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper which published said notice. [1953 c 233 § 1; 1941 c 213 § 4; 1921 c 99 § 2; Rem. Supp. 1941 § 253-2.]

65.16.040 Legal publications to be approved—

Order of approval. Sixty days from and after the date *this act becomes effective, a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding, or other official document now or hereafter required by law to be published, shall be a newspaper which has been approved as a legal newspaper by order of the superior court of the county in which such newspaper is published. Such order may be entered without notice upon presentation of a petition by or on behalf of the publisher, setting forth the qualifications of the newspaper as required by *this act, and upon evidence satisfactory to the court that such newspaper is so qualified. [1941 c 213 § 1; Rem. Supp. 1941 § 253a.]

*Reviser's note: (1) The language "this act" appears in 1941 c 213 codified as RCW 65.16.020 through 65.16.080.

(2) The effective date of this act is midnight June 11, 1941; see preface 1941 session laws.

65.16.050 Revocation of approval—Notice.

An order of approval of a newspaper shall remain effective from the time of the entry thereof until the approval be terminated by a subsequent order of the court, which may be done whenever it shall be brought to the attention of the court that the newspaper is no longer qualified as a legal newspaper, and after notice of hearing issued by the clerk and served upon

the publisher, at least ten days prior to the date of hearing, by delivering a copy of such notice to the person in charge of the business office of the publisher, or if the publisher has no business office at the time of service, by mailing a copy of such notice addressed to the publisher at the place of publication alleged in the petition for approval. [1941 c 213 § 2; Rem. Supp. 1941 § 253b.]

65.16.060 Choice of newspapers. Any summons, citation, notice of sheriff's sale, or legal advertisement of any description, the publication of which is now or may be hereafter required by law, may be published in any daily or weekly legal newspaper published in the county where the action, suit or other proceeding is pending, or is to be commenced or had, or in which such notice, summons, citation, or other legal advertisement is required to be given: PROVIDED, HOWEVER, That if there be more than one legal newspaper in which any such legal notice, summons, citation or legal advertisement might lawfully be published, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such legal notice, summons, citation, notice of sheriff's sale or other legal advertisement shall be published. [1941 c 213 § 6; 1921 c 99 § 5; Rem. Supp. 1941 § 253-5.]

65.16.070 List posted in clerk's office. Publications commenced in a legal newspaper, *when this act takes effect, may be completed in that newspaper notwithstanding any failure to obtain an order of approval under *this act, and notwithstanding an order of termination of approval prior to completion of publication. The clerk of the superior court of each county shall post and keep posted in a prominent place in his office a list of the newspapers published in that county which are approved as legal newspapers. [1941 c 213 § 7; RRS § 253-5a.]

*Reviser's note: "this act," "when this act takes effect," see note following RCW 65.16.040.

65.16.080 Scope of provisions. The provisions of *this act shall not apply in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices. [1941 c 213 § 5; 1921 c 99 § 3; Rem. Supp. 1941 § 253-3.]

*Reviser's note: "this act," see note following RCW 65.16.040.

65.16.091 Rates for legal notices. The rate charged by a newspaper for legal notices shall not exceed the national advertising rate extended by the newspaper to all general advertisers and advertising agencies in its published rate card. [1977 c 34 § 3.]

65.16.095 Rates for political candidates. The rate charged by a newspaper for advertising in relation to candidates for political office shall not exceed the national advertising rate extended to all general advertisers and advertising agencies in its published rate card. [1955 c 186 § 2.]

Severability—1955 c 186: "If any section of this act shall be found unconstitutional it shall not invalidate the remaining section." [1955 c 186 § 3.]

65.16.100 Omissions for Sundays and holidays.

Where any law or ordinance of any incorporated city or town in this state provides for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement: PROVIDED, That the publication of the required number of notices is complied with. [1921 c 99 § 6; RRS § 253-6.]

65.16.110 Affidavit to cover payment of fees. The affidavit of publication of all notices required by law to be published shall state the full amount of the fee charged for such publication and that the fee has been paid in full. [1921 c 99 § 7; RRS § 253-7.]

65.16.120 Payment of fees in advance, on demand.

When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof. [Code 1881 § 2092; 1869 p 373 § 14; RRS § 504.]

65.16.130 Publication of official notices by radio or television—Restrictions. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his judgment, the public interest will be served thereby: PROVIDED, That the time, place and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that such broadcasts shall be made only by duly employed personnel of the station from which such broadcasts emanate, and that notices by political subdivisions may be made only by stations situated within the county of origin of the legal notice. [1961 c 85 § 1; 1951 c 119 § 1.]

65.16.140 Broadcaster to retain copy or transcription. Each radio or television station broadcasting any legal notice or notice of event shall for a period of six months subsequent to such broadcast retain at its office a copy or transcription of the text of the notice as actually broadcast which shall be available for public inspection. [1961 c 85 § 2; 1951 c 119 § 2.]

65.16.150 Proof of publication by radio or television. Proof of publication of legal notice or notice of event by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of the station broadcasting the same. [1961 c 85 § 3; 1951 c 119 § 3.]

65.16.160 Publication of ordinances. (1) Whenever any county is required by law to publish legal notices containing the full text of any proposed or adopted ordinance in a newspaper, the county may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

- (a) The name of the county;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A section-by-section summary;
- (e) Any other information which the county finds is necessary to provide a complete summary; and
- (f) A statement that the full text will be mailed upon request.

Publication of the title of an ordinance by a county authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a complete summary of that ordinance, and a section-by-section summary shall not be required.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or penalties or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(3) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county. [1995 c 157 § 1; 1994 c 273 § 19; 1977 c 34 § 4.]

Chapter 65.20**CLASSIFICATION OF MANUFACTURED HOMES**

Sections	Purpose.
65.20.010	Purpose.
65.20.020	Definitions.
65.20.030	Clarification of type of property and perfection of security interests.
65.20.040	Elimination of title—Application.
65.20.050	Elimination of title—Approval.
65.20.060	Eliminating title—Lenders and conveyances.
65.20.070	Eliminating title—Removing manufactured home when title has been eliminated.
65.20.080	Eliminating title—Uniform forms.
65.20.090	Eliminating title—Fees.
65.20.100	Eliminating title—General supervision.
65.20.110	Eliminating title—Rules.
65.20.120	Eliminating title—Notice.
65.20.130	General penalties.
65.20.900	Prospective effect.
65.20.910	Effect on taxation.
65.20.920	Captions not law.
65.20.930	Short title.
65.20.940	Severability—1989 c 343.
65.20.950	Effective date—1989 c 343.

Certificates of ownership and registration: Chapter 46.12 RCW.

65.20.010 Purpose. The legislature recognizes that confusion exists regarding the classification of manufactured homes as personal or real property. This confusion is increased because manufactured homes are treated as vehicles in some parts of state statutes, however these homes are often used as residences to house persons residing in the state of Washington. This results in a variety of problems,

including: (1) Creating confusion as to the creation, perfection, and priority of security interests in manufactured homes; (2) making it more difficult and expensive to obtain financing and title insurance; (3) making it more difficult to utilize manufactured homes as an affordable housing option; and (4) increasing the risk of problems for and losses to the consumer. Therefore the purpose of this chapter is to clarify the type of property manufactured homes are, particularly relating to security interests, and to provide a statutory process to make the manufactured home real property by eliminating the title to a manufactured home when the home is affixed to land owned by the homeowner. [1989 c 343 § 1.]

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

(1) "Affixed" means that the manufactured home is installed in accordance with the installation standards in state law.

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

(3) "Eliminating the title" means to cancel an existing title issued by this state or a foreign jurisdiction or to waive the certificate of ownership required by chapter 46.12 RCW and recording the appropriate documents in the county real property records pursuant to this chapter.

(4) "Homeowner" means the owner of a manufactured home.

(5) "Land" means real property excluding the manufactured home.

(6) "Manufactured home" or "mobile home" means a structure, designed and constructed to be transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. "Manufactured home" does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable.

(7) "Owner" means, when referring to a manufactured home that is titled, the person who is the registered owner. When referring to a mobile home that is untitled pursuant to this chapter, the owner is the person who owns the land. When referring to land, the person may have fee simple title, have a leasehold estate of thirty-five years or more, or be purchasing the property on a real estate contract. Owners include joint tenants, tenants in common, holders of legal life estates, and holders of remainder interests.

(8) "Person" means any individual, trustee, partnership, corporation, or other legal entity. "Person" may refer to more than one individual or entity.

(9) "Secured party" means the legal owner when referring to a titled mobile home, or the lender securing a loan through a mortgage, deed of trust, or real estate contract when referring to land or land containing an untitled manufactured home pursuant to this chapter.

(10) "Security interest" means an interest in property to secure payment of a loan made by a secured party to a borrower.

(11) "Title" or "titled" means a certificate of ownership issued pursuant to chapter 46.12 RCW. [1989 c 343 § 2.]

65.20.030 Clarification of type of property and perfection of security interests. When a manufactured home is sold or transferred on or after March 1, 1990, and when all ownership in the manufactured home is transferred through the sale or other transfer of the manufactured home to new owners, the manufactured home shall be real property when the new owners eliminate the title pursuant to this chapter. The manufactured home shall not be real property in any form, including fixture law, unless the title is eliminated under this chapter. Where any person who owned a used manufactured home on March 1, 1990, continues to own the manufactured home on or after March 1, 1990, the interests and rights of owners, secured parties, lienholders, and others in the manufactured home shall be based on the law prior to March 1, 1990, except where the owner voluntarily eliminates the title to the manufactured home by complying with this chapter. If the title to the manufactured home is eliminated under this chapter, the manufactured home shall be treated the same as a site-built structure and ownership shall be based on ownership of the real property through real property law. If the title to the manufactured home has not been eliminated under this chapter, ownership shall be based on chapter 46.12 RCW.

For purposes of perfecting and realizing upon security interests, manufactured homes shall always be treated as follows: (1) If the title has not been eliminated under this chapter, security interests in the manufactured home shall be perfected only under chapter 46.12 RCW and the lien shall be treated as securing personal property for purposes of realizing upon the security interest. If the manufactured home is attached to land owned by the homeowner and the secured party seeks to remove the home pursuant to a contract, the secured party is liable for damage to the land to the extent the secured party would be liable if the manufactured home was a fixture under chapter 62A.9 RCW; or (2) if the title has been eliminated under this chapter, a separate security interest in the manufactured home shall not exist, and the manufactured home shall only be secured as part of the real property through a mortgage, deed of trust, or real estate contract. [1989 c 343 § 3.]

65.20.040 Elimination of title—Application. If a manufactured home is affixed to land that is owned by the homeowner, the homeowner may apply to the department to have the title to the manufactured home eliminated. The application package shall consist of the following:

(1) An affidavit, in the form prescribed by the department, signed by all the owners of the manufactured home and containing:

(a) The date;

(b) The names of all of the owners of record of the manufactured home;

(c) The legal description of the real property;

(d) A description of the manufactured home including model year, make, width, length, and vehicle identification number;

(e) The names of all secured parties in the manufactured home; and

(f) A statement that the owner of the manufactured home owns the real property to which it is affixed;

(2) Certificate of ownership for the manufactured home, or the manufacturer's statement of origin in the case of a new manufactured home. Where title is held by the secured party as legal owner, the consent of the secured party must be indicated by the legal owner releasing his or her security interest;

(3) A certification by the local government indicating that the manufactured home is affixed to the land;

(4) Payment of all licensing fees, excise tax, use tax, real estate tax, recording fees, and proof of payment of all property taxes then due; and

(5) Any other information the department may require. [1989 c 343 § 4.]

65.20.050 Elimination of title—Approval. The department shall approve the application for elimination of the title when all requirements listed in RCW 65.20.040 have been satisfied and the registered and legal owners of the manufactured home have consented to the elimination of the title. After approval, the department shall have the approved application recorded in the county or counties in which the land is located and on which the manufactured home is affixed.

The county auditor shall record the approved application, and any other form prescribed by the department, in the county real property records. The manufactured home shall then be treated as real property as if it were a site-built structure. Removal of the manufactured home from the land is prohibited unless the procedures set forth in RCW 65.20.070 are complied with.

The department shall cancel the title after verification that the county auditor has recorded the appropriate documents, and the department shall maintain a record of each manufactured home title eliminated under this chapter by vehicle identification number. The title is deemed eliminated on the date the appropriate documents are recorded by the county auditor. [1989 c 343 § 5.]

65.20.060 Eliminating title—Lenders and conveyances. It is the responsibility of the owner, secured parties, and others to take action as necessary to protect their respective interests in conjunction with the elimination of the title or reissuance of a previously eliminated title.

A manufactured home whose title has been eliminated shall be conveyed by deed or real estate contract and shall only be transferred together with the property to which it is affixed, unless procedures described in RCW 65.20.070 are completed.

Nothing in this chapter shall be construed to require a lender to consent to the elimination of the title of a manufactured home, or to retitling a manufactured home under RCW 65.20.070. The obligation of the lender to consent is governed solely by the agreement between the lender and the owner of the manufactured home. Absent any express

written contractual obligation, a lender may withhold consent in the lender's sole discretion. In addition, the homeowner shall comply with all reasonable requirements imposed by a lender for obtaining consent, and a lender may charge a reasonable fee for processing a request for consent. [1989 c 343 § 6.]

65.20.070 Eliminating title—Removing manufactured home when title has been eliminated. Before physical removal of an untitled manufactured home from the land the home is affixed to, the owner shall follow one of these two procedures:

(1) Where a title is to be issued or the home has been destroyed:

(a) The owner shall apply to the department for a title pursuant to chapter 46.12 RCW. In addition the owner shall provide:

(i) An affidavit in the form prescribed by the department, signed by the owners of the land and all secured parties and other lienholders in the land consenting to the removal of the home;

(ii) Payment of recording fees;

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the date of application for a new title under this subsection; and

(iv) Any other information the department may require;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to the permit required by RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) The department shall approve the application for title when the requirements of chapter 46.12 RCW and this subsection have been satisfied. Upon approval the department shall have the approved application and the affidavit recorded in the county or counties in which the land from which the home is being removed is located and the department shall issue a title. The title is deemed effective on the date the appropriate documents are recorded with the county auditor.

(2) Where the manufactured home is to be moved to a new location but again will be affixed to land owned by the homeowner a new title need not be issued, but the following procedures must be complied with:

(a) The owner shall apply to the department for a transfer in location of the manufactured home and if a new owner, a transfer in ownership by filing an application pursuant to RCW 65.20.040. In addition the owner shall include:

(i) An affidavit in the form prescribed by the department signed by all of the owners of the real property from which the manufactured home is being moved indicating their consent. The affidavit shall include the consent of all secured parties and other lienholders in the land from which the manufactured home is being moved;

(ii) A legal description and property tax parcel number of the real property from which the home is being removed and a legal description and property tax parcel number of the land on which the home is being moved to; and

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the application for transfer in location under this subsection;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) After approval, including verification that the owners, secured parties, and other lienholders have consented to the move, the department shall have the approved application recorded in the county or counties in which the land from which the home is being removed and the land to which the home is being moved is located. [1989 c 343 § 7.]

65.20.080 Eliminating title—Uniform forms. The department may prepare standard affidavits, lienholder's consents, and other forms to be used pursuant to this chapter. [1989 c 343 § 8.]

65.20.090 Eliminating title—Fees. The director may, in addition to the title fees and other fees and taxes required under chapter 46.12 RCW establish by rule a reasonable fee to cover the cost of processing documents and performing services by the department required under this chapter.

Fees collected by the department for services provided by the department under this chapter shall be forwarded to the state treasurer. The state treasurer shall credit such moneys to the motor vehicle fund and all department expenses incurred in carrying out the provisions of this chapter shall be paid from such fund as authorized by legislative appropriation. [1989 c 343 § 9.]

65.20.100 Eliminating title—General supervision. The department shall have the general supervision and control of the elimination of titles and shall have full power to do all things necessary and proper to carry out the provisions of this chapter. The director shall have the power to appoint the county auditors as the agents of the department. [1989 c 343 § 11.]

65.20.110 Eliminating title—Rules. The department may make any reasonable rules relating to the enforcement and proper operation of this chapter. [1989 c 343 § 12.]

65.20.120 Eliminating title—Notice. County auditors shall notify county assessors regarding elimination of titles to manufactured homes, the retitling of manufactured homes, and the movement of manufactured homes under RCW 65.20.070. [1989 c 343 § 13.]

65.20.130 General penalties. Every person who falsifies or intentionally omits material information required in an affidavit, or otherwise intentionally violates a material provision of this chapter, is guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021. [1989 c 343 § 10.]

65.20.900 Prospective effect. This chapter applies prospectively only. RCW 65.20.030 applies to all security interests perfected on or after March 1, 1990. This chapter applies to the sale or transfer of manufactured homes on or after March 1, 1990, where all of the existing ownership rights and interests in the manufactured home are terminated in favor of new and different owners, or where persons who own a manufactured home on or after March 1, 1990, voluntarily elect to eliminate the title to the manufactured home under this chapter. [1989 c 343 § 14.]

65.20.910 Effect on taxation. Nothing in this chapter shall be construed to affect the taxation of manufactured homes. [1989 c 343 § 15.]

65.20.920 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1989 c 343 § 16.]

65.20.930 Short title. This chapter may be known and cited as the manufactured home real property act. [1989 c 343 § 17.]

65.20.940 Severability—1989 c 343. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 343 § 26.]

65.20.950 Effective date—1989 c 343. This act shall take effect on March 1, 1990. [1989 c 343 § 27.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.04 Definitions.
- 66.08 Liquor control board—General provisions.
- 66.12 Exemptions.
- 66.16 State liquor stores.
- 66.20 Liquor permits.
- 66.24 Licenses—Stamp taxes.
- 66.28 Miscellaneous regulatory provisions.
- 66.32 Search and seizure.
- 66.36 Abatement proceedings.
- 66.40 Local option.
- 66.44 Enforcement—Penalties.
- 66.98 Construction.

Alcoholism, intoxication, and drug addiction private establishments: Chapter 71.12 RCW. treatment: Chapter 70.96A RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

Chapter 66.04 DEFINITIONS

Sections

- 66.04.010 Definitions.
- 66.04.011 "Public place" not to include certain parks and picnic areas.

66.04.010 Definitions. In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(3) "Beer distributor" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state, beer importers, or foreign produced beer from a source outside the state of Washington, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(4) "Beer importer" means a person or business within Washington who purchases beer from a United States brewery holding a certificate of approval (B5) or foreign

produced beer from a source outside the state of Washington for the purpose of selling the same pursuant to this title.

(5) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(8) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(9) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW

(10) "Distiller" means a person engaged in the business of distilling spirits.

(11) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(12) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(13) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(14) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(15) "Fund" means 'liquor revolving fund.'

(16) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(17) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(18) "Imprisonment" means confinement in the county jail.

(19) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(20) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(21) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(22) "Package" means any container or receptacle used for holding liquor.

(23) "Permit" means a permit for the purchase of liquor under this title.

(24) "Person" means an individual, copartnership, association, or corporation.

(25) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(26) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(27) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(28) "Regulations" means regulations made by the board under the powers conferred by this title.

(29) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(30) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

(31) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(32) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

(33) "Store" means a state liquor store established under this title.

(34) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(35) "Vendor" means a person employed by the board as a store manager under this title.

(36) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(37) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(38) "Wine distributor" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the state for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(39) "Wine importer" means a person or business within Washington who purchases wine from a United States

winery holding a certificate of approval (W7) or foreign produced wine from a source outside the state of Washington for the purpose of selling the same pursuant to this title. [1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

66.04.011 "Public place" not to include certain parks and picnic areas. "Public place" as defined in this title shall not include (a) any of those parks under the control of the state parks and recreation commission, nor, (b) parks and picnic areas adjacent to and held by the same ownership as licensed brewers and domestic wineries for the consumption of beer and wine produced by the respective brewery or winery, as prescribed by regulation adopted by the board pursuant to chapter 34.05 RCW. [1977 ex.s. c 219 § 1; 1971 ex.s. c 208 § 3.]

Chapter 66.08

LIQUOR CONTROL BOARD—GENERAL PROVISIONS

Sections

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Minors, access to tobacco, role of liquor control board: Chapter 70.155
RCW.

Public bodies may retain collection agencies to collect public debts—Fees:
RCW 19.16.500.

66.08.010 Title liberally construed. This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. [1933 ex.s. c 62 § 2; RRS § 7306-2.]

66.08.012 Creation of board—Chairman—Quorum—Salary. There shall be a board, known as the "Washington state liquor control board," consisting of three members, to be appointed by the governor, with the consent of the senate, who shall each be paid an annual salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The governor may, in his discretion, appoint one of the members as chairman of the board, and a majority of the members shall constitute a quorum of the board. [1961 c 307 § 7; 1949 c 5 § 8; 1945 c 208 § 1; 1937 c 225 § 1; 1933 ex.s. c 62 § 63; Rem. Supp. 1949 § 7306-63. Formerly RCW 43.66.010.]

Severability—1945 c 5: See RCW 66.98.080.

66.08.014 Terms of members—Vacancies—Principal office—Removal—Devotion of time to duties—Bond—Oath. (1) The members of the board to be appointed after December 2, 1948 shall be appointed for terms beginning January 15, 1949, and expiring as follows: One member of the board for a term of three years from January 15, 1949; one member of the board for a term of six years from January 15, 1949; and one member of the board for a term of nine years from January 15, 1949. Each of the

members of the board appointed hereunder shall hold office until his successor is appointed and qualified. After June 11, 1986, the term that began on January 15, 1985, will end on January 15, 1989, the term beginning on January 15, 1988, will end on January 15, 1993, and the term beginning on January 15, 1991, will end on January 15, 1997. Thereafter, upon the expiration of the term of any member appointed after June 11, 1986, each succeeding member of the board shall be appointed and hold office for the term of six years. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the board shall impair the right of the remaining member or members to act, except as herein otherwise provided.

(2) The principal office of the board shall be at the state capitol, and it may establish such other offices as it may deem necessary.

(3) Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(4) Each member of the board shall devote his entire time to the duties of his office and no member of the board shall hold any other public office. Before entering upon the duties of his office, each of said members of the board shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor in the penal sum of fifty thousand dollars conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the board. [1986 c 105 § 1; 1949 c 5 § 9; 1947 c 113 § 1; 1945 c 208 § 2; 1933 ex.s. c 62 § 64; Rem. Supp. 1949 § 7306-64. Formerly RCW 43.66.020.]

Severability—1949 c 5: See RCW 66.98.080.

66.08.016 Employees of the board. The board may employ such number of employees as in its judgment are required from time to time. [1961 c 1 § 30 (Initiative Measure No. 207, approved November 8, 1960); 1947 c 113 § 2; 1933 ex.s. c 62 § 65; Rem. Supp. 1947 § 7306-65. Formerly RCW 43.66.030.]

66.08.020 Liquor control board to administer. The administration of this title, including the general control, management and supervision of all liquor stores, shall be vested in the liquor control board, constituted under this title. [1933 ex.s. c 62 § 5; RRS § 7306-5.]

Prosecuting attorney to make annual report of liquor law prosecutions:
RCW 36.27.020.

66.08.022 Attorney general is general counsel of board—Duties—Assistants. The attorney general shall be the general counsel of the liquor control board and he shall institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of the provisions of this chapter and Title 66 RCW.

He shall assign such assistants as may be necessary to the exclusive duty of assisting the liquor control board in the enforcement of Title 66 RCW. [1961 ex.s. c 6 § 2; 1933 ex.s. c 62 § 66; RRS § 7306-66. Formerly RCW 43.66.140.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.024 Annual audit—State auditor's duties—Additional audits—Public records. The state auditor shall audit the books, records, and affairs of the board annually. The board may provide for additional audits by certified public accountants. All such audits shall be public records of the state. The payment of the audits provided for in this section shall be paid as provided in RCW 66.08.026 for other administrative expenses. [1987 c 74 § 1; 1981 1st ex.s. c 5 § 2; 1961 ex.s. c 6 § 3; 1937 c 138 § 1; 1935 c 174 § 12; 1933 ex.s. c 62 § 71; RRS § 7306-71. Formerly RCW 43.66.150.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined. All administrative expenses of the board incurred on and after April 1, 1963 shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board, and the costs of supplying, installing, and maintaining equipment used in state liquor stores and agency liquor vendor stores for the purchase of liquor by nonlicensees using debit or credit cards. The administrative expenses shall not, however, be deemed to include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in the stores of agency liquor vendors pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. [1998 c 265 § 2; 1997 c 148 § 1; 1996 c 291 § 3; 1983 c 160 § 2; 1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

Intent—1998 c 265: See note following RCW 66.16.041.

Severability—1963 c 239: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of

the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 239 § 2.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 c.x.s. c 6: See notes following RCW 66.08.170.

66.08.030 Regulations—Scope. (1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and shall be filed in the office of the code reviser, and thereupon shall have the same force and effect as if incorporated in this title. Such regulations, together with a copy of this title, shall be published in pamphlets and shall be distributed as directed by the board.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power of the board to make regulations in the manner set out in that subsection shall extend to

(a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board;

(b) prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title;

(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;

(e) prescribing, subject to RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;

(g) prescribing an official seal and official labels and stamps and determining the manner in which they shall be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;

(i) prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title;

(j) prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(k) prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same shall be kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(l) regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(m) prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(n) prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(o) prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(p) regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(q) prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

(r) prescribing the conditions, accommodations and qualifications requisite for the obtaining of licenses to sell beer and wines, and regulating the sale of beer and wines thereunder;

(s) specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(t) providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(u) providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(v) providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(w) providing for the giving of fidelity bonds by any or all of the employees of the board: PROVIDED, That the premiums therefor shall be paid by the board;

(x) providing for the shipment by mail or common carrier of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(z) seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this

state which do not conform in all respects to the standards prescribed by this title or the regulations of the board: PROVIDED, Nothing herein contained shall be construed as authorizing the liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages. [1977 ex.s. c 115 § 1; 1971 c 62 § 1; 1943 c 102 § 1; 1933 ex.s. c 62 § 79; RRS § 7306-79. Formerly RCW 66.08.030 and 66.08.040.]

66.08.050 Powers of board in general. The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, liquor vendors. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a vendor for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such liquor vendors shall be agents of the board and be authorized to sell liquor to such persons, firms or corporations as provided for the sale of liquor from a state liquor store, and such vendors shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor: PROVIDED, That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [1997 c 228 § 1; 1993 c 25 § 1; 1986 c 214 § 2; 1983 c 160 § 1; 1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

Severability—1975 1st ex.s. c 173: "If any phrase, clause, subsection, or section of this 1975 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1975 amendatory act without the phrase, clause, subsection, or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1975 1st ex.s. c 173 § 13.]

Effective date—1975 1st ex.s. c 173: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 173 § 14.]

Severability—1963 c 239: See note following RCW 66.08.026.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.08.0501 Adoption of rules. The liquor control board may adopt appropriate rules pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of chapter 321, Laws of 1997. [1997 c 321 § 56.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.08.055 Oaths may be administered and affidavits, declarations received. Every member of the board, and every employee authorized by the board to issue permits under this title may administer any oath and take and receive any affidavit or declaration required under this title or the regulations. [1933 ex.s. c 62 § 80; RRS § 7306-80. Formerly RCW 43.66.050.]

66.08.060 Board cannot advertise liquor—Advertising regulations. The board shall not advertise liquor in any form or through any medium whatsoever. The board shall have power to adopt any and all reasonable regulations as to the kind, character and location of advertising of liquor. [1933 ex.s. c 62 § 43; RRS § 7306-43.]

66.08.070 Purchase of liquor by board—Consignment not prohibited—Warranty or affirmation not required for wine or malt purchases. (1) Every order for the purchase of liquor shall be authorized by the board, and no order for liquor shall be valid or binding unless it is so authorized and signed by the board or its authorized designee.

(2) A duplicate of every such order shall be kept on file in the office of the board.

(3) All cancellations of such orders made by the board shall be signed in the same manner and duplicates thereof

kept on file in the office of the board. Nothing in this title shall be construed as preventing the board from accepting liquor on consignment.

(4) In the purchase of wine or malt beverages the board shall not require, as a term or condition of purchase, any warranty or affirmation with respect to the relationship of the price charged the board to any price charged any other buyer. [1985 c 226 § 2; 1973 1st ex.s. c 209 § 1; 1933 ex.s. c 62 § 67; RRS § 7306-67.]

Severability—1973 1st ex.s. c 209: "If any phrase, clause, subsection or section of this 1973 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1973 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1973 1st ex.s. c 209 § 21.]

Effective date—1973 1st ex.s. c 209: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 209 § 22.]

66.08.075 Officer, employee not to represent manufacturer, wholesaler in sale to board. No official or employee of the liquor control board of the state of Washington shall, during his term of office or employment, or for a period of two years immediately following the termination thereof, represent directly or indirectly any manufacturer or wholesaler of liquor in the sale of liquor to the board. [1937 c 217 § 5 (adding new section 42-A to 1933 ex.s. c 62); RRS § 7306-42A. Formerly RCW 43.66.040.]

66.08.080 Interest in manufacture or sale of liquor prohibited. Except as provided by chapter 42.52 RCW, no member of the board and no employee of the board shall have any interest, directly or indirectly, in the manufacture of liquor or in any liquor sold under this title, or derive any profit or remuneration from the sale of liquor, other than the salary or wages payable to him in respect of his office or position, and shall receive no gratuity from any person in connection with such business. [1994 c 154 § 313; 1981 1st ex.s. c 5 § 3; 1933 ex.s. c 62 § 68; RRS § 7306-68.]

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.08.090 Sale of liquor by employees of board. No employee shall sell liquor in any other place, nor at any other time, nor otherwise than as authorized by the board under this title and the regulations. [1933 ex.s. c 62 § 31; RRS § 7306-31.]

66.08.095 Liquor for training or investigation purposes. The liquor control board may provide liquor at no charge, including liquor forfeited under chapter 66.32 RCW, to recognized law enforcement agencies within the state when the law enforcement agency will be using the liquor for bona fide law enforcement training or investigation purposes. [1993 c 26 § 3.]

66.08.100 Jurisdiction of action against board—Immunity from personal liability of members. No court

of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything done or omitted to be done in or arising out of the performance of his or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the board or any employee of the board in the performance of his duties and in the administration of this title. [1935 c 174 § 9 (adding new section 62-A to 1933 ex.s. c 62); RRS § 7306-62A. Formerly RCW 66.08.100 and 66.08.110.]

66.08.120 Preemption of field by state—Exception. No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect: PROVIDED, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board. [1933 ex.s. c 62 § 29; RRS § 7306-29.]

66.08.130 Inspection of books and records—Goods possessed or shipped—Refusal as violation. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books and records of

- (1) any manufacturer;
- (2) any license holder;
- (3) any drug store holding a permit to sell on prescriptions;

(4) the freight and express books and records and all waybills, bills of lading, receipts and documents in the possession of any common carrier doing business within the state, containing any information or record relating to any goods shipped or carried, or consigned or received for shipment or carriage within the state. Every manufacturer, license holder, drug store holding a permit to sell on prescriptions, and common carrier, and every owner or officer or employee of the foregoing, who neglects or refuses to produce and submit for inspection any book, record or document referred to in this section when requested to do so by the board or by a person so appointed by it shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 4; 1933 ex.s. c 62 § 56; RRS § 7306-56.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.08.140 Inspection of books and records—Financial dealings—Penalty for refusal. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books, documents and records of any person

lending money to or in any manner financing any license, holder or applicant for license insofar as such books, documents and/or records pertain to the financial transaction involved. Every person who neglects or refuses to produce and submit for inspection any book, record or document as required by this section when requested to do so by the board or by a person duly appointed by it shall be guilty of a violation of this title. [1945 c 48 § 1 (adding new section 56-A to 1933 ex.s. c 62); RRS § 7306-56A.]

66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension. The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to thirty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order; and proceedings for revocation or other action must be promptly instituted and determined. [1989 c 175 § 122; 1967 c 237 § 23; 1933 ex.s. c 62 § 62; RRS § 7306-62.]

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

66.08.160 Acquisition of warehouse authorized. The Washington state liquor board and the state finance committee are hereby authorized to lease or purchase or acquire a site and erect a warehouse building in the city of Seattle, and for that purpose may borrow money and may issue bonds in an amount not to exceed one million five hundred thousand dollars to be amortized from liquor revenues over a period of not to exceed ten years. [1947 c 134 § 1; No RRS.]

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable. There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law

shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

Transfer of liquor revolving fund to state treasurer—Outstanding obligations: "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Effective date—1961 ex.s. c 6: "This act shall take effect on June 30, 1961." [1961 ex.s. c 6 § 7.]

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties and forfeitures derived under *this act from **class H licenses or **class H licensees shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the University of Washington for the forensic investigations council to conduct the state toxicological laboratory pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and

wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [1997 c 451 § 3; 1997 c 321 § 57; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Reviser's note: *(1) The term "this act" was originally used in chapter 13, Laws of 1935.

***(2) "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5.

(3) This section was amended by 1997 c 321 § 57 and by 1997 c 451 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1997 c 451: See note following RCW 66.24.290.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Effective date—1986 c 87: "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 8.]

Severability—1949 c 5: See RCW 66.98.080.

Distribution for state toxicological lab: RCW 68.50.107.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance. When excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(1) Three-tenths of one percent to border areas under RCW 66.08.195; and

(2) From the amount remaining after distribution under subsection (1) of this section, fifty percent to the general fund of the state, ten percent to the counties of the state, and forty percent to the incorporated cities and towns of the state.

The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340. [1995 c 159 § 1; 1991 sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

Effective date—1995 c 159: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 159 § 6.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Effective date—1988 c 229 §§ 2-4: "Sections 2 through 4 of this act shall take effect July 1, 1989." [1988 c 229 § 5.]

66.08.195 Liquor revolving fund—Definition of terms relating to border areas. For the purposes of this chapter:

(1) "Border area" means any incorporated city or town located within seven miles of the Washington-Canadian border or any unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border.

(2) "Border area per-capita law-enforcement spending" equals total per capita expenditures in a border area on: Law enforcement operating costs, court costs, law enforcement-related insurance, and detention expenses, minus funds allocated to a border area under RCW 66.08.190 and 66.08.196.

(3) "Border-crossing traffic total" means the number of vehicles, vessels, and aircraft crossing into the United States through a United States customs service border crossing that enter into the border area during a federal fiscal year, using border crossing statistics and criteria included in guidelines adopted by the department of community, trade, and economic development.

(4) "Border-related crime statistic" means the sum of infractions and citations issued, and arrests of persons permanently residing outside Washington state in a border area during a calendar year. [1995 c 159 § 2; 1988 c 229 § 3.]

Effective date—1995 c 159: See note following RCW 66.08.190.

Finding—Effective date—1988 c 229: See notes following RCW 66.08.190.

66.08.196 Liquor revolving fund—Distribution of funds to border areas. Distribution of funds to border areas under RCW 66.08.190 and 66.24.290 (1)(a) and (4) shall be as follows:

(1) Sixty-five percent of the funds shall be distributed to border areas ratably based on border area traffic totals;

(2) Twenty-five percent of the funds shall be distributed to border areas ratably based on border-related crime statistics; and

(3) Ten percent of the funds shall be distributed to border areas ratably based upon border area per capita law enforcement spending.

Distributions to an unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border shall be made to the county in which such an area is located and may only be spent on services provided to that area. [1997 c 451 § 4; 1995 c 159 § 3.]

Effective date—1997 c 451: See note following RCW 66.24.290.

Effective date—1995 c 159: See note following RCW 66.08.190.

66.08.198 Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption. The depart-

ment of community, trade, and economic development shall develop guidelines to determine the figures used under the three distribution factors defined in RCW 66.08.195. At the request of any border community, the department may review these guidelines once every three years. [1995 c 159 § 4.]

Effective date—1995 c 159: See note following RCW 66.08.190.

66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined. With respect to the ten percent share coming to the counties, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible county shall be determined by a division among the eligible counties according to the relation which the population of the unincorporated area of such eligible county, as last determined by the office of financial management, bears to the population of the total combined unincorporated areas of all eligible counties, as determined by the office of financial management: PROVIDED, That no county in which the sale of liquor is forbidden in the unincorporated area thereof as the result of an election shall be entitled to share in such distribution. "Unincorporated area" means all that portion of any county not included within the limits of incorporated cities and towns.

When a special county census has been conducted for the purpose of determining the population base of a county's unincorporated area for use in the distribution of liquor funds, the census figure shall become effective for the purpose of distributing funds as of the official census date once the census results have been certified by the office of financial management and officially submitted to the office of the secretary of state. [1979 c 151 § 167; 1977 ex.s. c 110 § 2; 1957 c 175 § 7. Prior: 1955 c 109 § 3; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.100.]

Population determinations, office of financial management: Chapter 43.62 RCW.

66.08.210 Liquor revolving fund—Computation for distribution to cities. With respect to the forty percent share coming to the incorporated cities and towns, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible city or town shall be determined by a division among the eligible cities and towns within the state ratably on the basis of population as last determined by the office of financial management: AND PROVIDED, That no city or town in which the sale of liquor is forbidden as the result of an election shall be entitled to any share in such distribution. [1979 c 151 § 168; 1977 ex.s. c 110 § 3; 1957 c 175 § 8. Prior: 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.110.]

Allocation of state funds on population basis: RCW 43.62.020, 43.62.030. Determining population of territory annexed to city: RCW 35.13.260.

66.08.220 Liquor revolving fund—Separate account of part of gross sales to *class H licensees, distribution. The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to *class H licensees; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, HOWEVER, That no election unit in which the sale of liquor under *class H licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

***Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31, effective July 1, 1998. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5

Severability—1949 c 5: See RCW 66.98.080.

66.08.230 Initial disbursement to wine commission—Repayment. To provide for the operation of the wine commission prior to its first quarterly disbursement, the liquor control board shall, on July 1, 1987, disburse one hundred ten thousand dollars to the wine commission. However, such disbursement shall be repaid to the liquor control board by a reduction from the quarterly disbursements to the wine commission under RCW 66.24.210 of twenty-seven thousand five hundred dollars each quarter until such amount is repaid. These funds shall be used to establish the Washington wine commission and the other purposes delineated in chapter 15.88 RCW. [1987 c 452 § 12.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.08.235 Liquor control board construction and maintenance account. The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and vendor system. [1997 c 75 § 1.]

Reviser's note: 1997 c 75 directed that this section be added to chapter 43.79 RCW. This section has been codified in chapter 66.08 RCW, which relates more directly to the liquor control board.

Effective date—1997 c 75: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 75 § 3.]

66.08.240 Transfer of funds pursuant to government service agreement. Funds that are distributed to counties, cities, or towns pursuant to this chapter may be transferred by the recipient county, city, or town to another unit of government pursuant to a government service

agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 10.]

Chapter 66.12 EXEMPTIONS

Sections

- 66.12.010 Wine or beer manufactured for home use.
- 66.12.020 Sales of liquor to board.
- 66.12.030 Licensed manufacturers not prevented from storing liquor—
Transshipment in interstate, foreign commerce—
Interstate, foreign transactions protected.
- 66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol.
- 66.12.070 Medicinal, culinary, and toilet preparations not usable as beverages—Sample and analysis.
- 66.12.110 Bringing alcoholic beverages into United States duty free for personal use—Payment of markup and tax on excess amounts—Class H license proximate to border.
- 66.12.120 Bringing alcoholic beverages into state from another state—
Payment of markup and tax.
- 66.12.125 Alcohol for use as fuel—Legislative finding and declaration.
- 66.12.130 Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum products for use as fuel.
- 66.12.140 Use of alcoholic beverages in culinary, restaurant, or food fermentation courses.
- 66.12.150 Beer or wine offered by hospital or nursing home for consumption on the premises.
- 66.12.160 Manufacture or sale of confections or food containing liquor.
- 66.12.170 Obtaining liquor for manufacturing confections or food products.
- 66.12.180 Donations to and use of wine by Washington wine commission.
- 66.12.190 Wine shipments from out of state—Limitations.
- 66.12.200 Out-of-state wine shipments—Labeling.
- 66.12.210 Wine shipments from out of state from unlicensed shipper—
Penalties.
- 66.12.220 Out-of-state wine shipper's license—Revocation.

66.12.010 Wine or beer manufactured for home use. Nothing in this title other than RCW 66.28.140, applies to wine or beer manufactured in any home for consumption therein, and not for sale. [1981 c 255 § 1; 1955 c 39 § 1; 1933 ex.s. c 62 § 32; RRS § 7306-32.]

66.12.020 Sales of liquor to board. Nothing in this title shall apply to or prevent the sale of liquor by any person to the board. [1933 ex.s. c 62 § 48; RRS § 7306-48.]

66.12.030 Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected. (1) Nothing in this title shall prevent any person licensed to manufacture liquor from keeping liquor in his warehouse or place of business.

(2) Nothing in this title shall prevent the transshipment of liquor in interstate and foreign commerce; but no person shall import liquor into the state from any other state or country, except, as herein otherwise provided, for use or sale in the state, except the board.

(3) Every provision of this title which may affect transactions in liquor between a person in this state and a person in another state or in a foreign country shall be construed to affect such transactions so far only as the

legislature has power to make laws in relation thereto. [1933 ex.s. c 62 § 49; RRS § 7306-49. Formerly RCW 66.12.030, 66.12.040, and 66.12.050.]

66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol. Nothing in this title shall apply to or prevent the sale, purchase or consumption

(1) of any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopoeia of the United States, or the dispensatory of the United States; or

(2) of any proprietary or patent medicine; or

(3) of wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance. [1933 ex.s. c 62 § 50; RRS § 7306-50.]

66.12.070 Medicinal, culinary, and toilet preparations not usable as beverages—Sample and analysis. (1)

Where a medicinal preparation contains liquor as one of the necessary ingredients thereof, and also contains sufficient medication to prevent its use as an alcoholic beverage, nothing in this title shall apply to or prevent its composition or sale by a druggist when compounded from liquor purchased by the druggist under a special permit held by him, nor apply to or prevent the purchase or consumption of the preparation by any person for strictly medicinal purposes.

(2) Where a toilet or culinary preparation, that is to say, any perfume, lotion, or flavoring extract or essence, contains liquor and also contains sufficient ingredient or medication to prevent its use as a beverage, nothing in this title shall apply to or prevent the sale or purchase of that preparation by any druggist or other person who manufactures or deals in the preparation, nor apply to or prevent the purchase or consumption of the preparation by any person who purchases or consumes it for any toilet or culinary purpose.

(3) In order to determine whether any particular medicinal, toilet, or culinary preparation referred to in this section contains sufficient ingredient or medication to prevent its use as an alcoholic beverage, the board may cause a sample of the preparation, purchased or obtained from any person whomsoever, to be analyzed by an analyst appointed or designated by the board; and if it appears from a certificate signed by the analyst that he finds the sample so analyzed by him did not contain sufficient ingredient or medication to prevent its use as an alcoholic beverage, the certificate shall be conclusive evidence that the preparation, the sample of which was so analyzed, is not a preparation the sale or purchase of which is permitted by this section. [1933 ex.s. c 62 § 51; RRS § 7306-51. Formerly RCW 66.12.070, 66.12.080, and 66.12.090.]

66.12.110 Bringing alcoholic beverages into United States duty free for personal use—Payment of markup and tax on excess amounts—*Class H license proximate to border. A person twenty-one years of age or over may bring into the state from without the United States, free of tax and markup, for his personal or household use such alcoholic beverages as have been declared and permitted to enter the United States duty free under federal law.

Such entry of alcoholic beverages in excess of that herein provided may be authorized by the board upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a Washington state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. The board may issue a *class H license to a charitable or nonprofit corporation of the state of Washington, the majority of the officers and directors of which are United States citizens and the minority of the officers and directors of which are citizens of the Dominion of Canada, and where the location of the premises for such *class H license is not more than ten miles south of the border between the United States and the province of British Columbia. [1975-'76 2nd ex.s. c 20 § 1. Prior: 1975 1st ex.s. c 256 § 1; 1975 1st ex.s. c 173 § 2; 1967 c 38 § 1.]

***Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31, effective July 1, 1998. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.12.120 Bringing alcoholic beverages into state from another state—Payment of markup and tax. Notwithstanding any other provision of Title 66 RCW, a person twenty-one years of age or over may, free of tax and markup, for personal or household use, bring into the state of Washington from another state no more than once per calendar month up to two liters of spirits or wine or two hundred eighty-eight ounces of beer. Additionally, such person may be authorized by the board to bring into the state of Washington from another state a reasonable amount of alcoholic beverages in excess of that provided in this section for personal or household use only upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying into effect the provisions of this section. [1995 c 100 § 1; 1975 1st ex.s. c 173 § 3.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050

66.12.125 Alcohol for use as fuel—Legislative finding and declaration. The legislature finds that the production of alcohol for use as a fuel or fuel supplement is of great importance to the state. Alcohol, when used as a fuel source, is less polluting to the atmosphere than conventional fuels and its use reduces the state's dependence on limited oil resources. Production of alcohol for use as a fuel provides a new use and market for Washington agricultural products and aids Washington farmers in producing food and fiber for the citizens of the state, nation, and world. Therefore, the legislature declares public policy to be one of encouragement toward the production and use of alcohol as a fuel or fuel supplement. [1980 c 140 § 1.]

66.12.130 Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum products for use as fuel. Nothing in this title shall apply to or prevent the sale, importation, purchase, production, or blending of alcohol used solely for fuel to be used in motor vehicles, farm implements, and machines or implements of husbandry or in combination with gasoline or other petroleum products for use as such fuel. Manufacturers and distillers of such alcohol fuel are not required to obtain a license under this title. Alcohol which is produced for use as fuel shall be denatured in accordance with a formula approved by the federal bureau of alcohol, tobacco and firearms prior to the removal of the alcohol from the premises as described in the approved federal permit application: PROVIDED, That alcohol which is being transferred between plants involved in the distillation or manufacture of alcohol fuel need not be denatured if it is transferred in accordance with federal bureau of alcohol, tobacco and firearms regulation 27 CFR 19.996 as existing on July 26, 1981. The exemptions from the state liquor control laws provided by this section only apply to distillers and manufacturers of alcohol to be used solely for fuel as long as the manufacturers and distillers are the holders of an appropriate permit issued under federal law. [1981 c 179 § 1; 1980 c 140 § 2.]

66.12.140 Use of alcoholic beverages in culinary, restaurant, or food fermentation courses. (1) Nothing in this title shall prevent the use of beer, wine, and/or spirituous liquor, for cooking purposes only, in conjunction with a culinary or restaurant course offered by a college, university, community college, area vocational technical institute, or private vocational school. Further, nothing in this title shall prohibit the making of beer or wine in food fermentation courses offered by a college, university, community college, area vocational technical institute, or private vocational school.

(2) "Culinary or restaurant course" as used in this section means a course of instruction which includes practical experience in food preparation under the supervision of an instructor who is twenty-one years of age or older.

(3) Persons under twenty-one years of age participating in culinary or restaurant courses may handle beer, wine, or spirituous liquor for purposes of participating in the courses, but nothing in this section shall be construed to authorize consumption of liquor by persons under twenty-one years of age or to authorize possession of liquor by persons under twenty-one years of age at any time or place other than while preparing food under the supervision of the course instructor.

(4) Beer, wine, and/or spirituous liquor to be used in culinary or restaurant courses shall be purchased at retail from the board or a retailer licensed under this title. All such liquor shall be securely stored in the food preparation area and shall not be displayed in an area open to the general public.

(5) Colleges, universities, community colleges, area vocational technical institutes, and private vocational schools shall obtain the prior written approval of the board for use

of beer, wine, and/or spirituous liquor for cooking purposes in their culinary or restaurant courses. [1982 c 85 § 8.]

66.12.150 Beer or wine offered by hospital or nursing home for consumption on the premises. Nothing in this title shall apply to or prevent a hospital, as defined in *RCW 70.39.020, or a nursing home as defined in RCW 18.51.010, from offering or supplying without charge beer or wine by the individual glass to any patient, member of a patient's family, or patient visitor, for consumption on the premises: PROVIDED, That such patient, family member, or visitor shall be at least twenty-one years of age, and that the beer or wine shall be purchased under this title. [1982 c 85 § 9.]

***Reviser's note:** RCW 70.39.020 was repealed by 1982 c 223 § 10, effective June 30, 1990.

66.12.160 Manufacture or sale of confections or food containing liquor. Nothing in this title shall apply to or prevent the manufacture or sale of confections or food products containing alcohol or liquor if: (1) The confection or food product does not contain more than one percent of alcohol by weight; and (2) the confection or food product has a label stating: "This product contains liquor and the alcohol content is one percent or less of the weight of the product." Manufacturers of confections or food products are not required to obtain a license under this title. [1984 c 78 § 3.]

Finding and declaration—1984 c 78: "The legislature finds that confectioners operating in the state are at an economic disadvantage due to a continued prohibition on the use of natural alcohol flavor in candies and that other related business entities, such as bakeries and delicatessens, may use natural alcohol flavors in the preparation of food for retail sale. Therefore, the legislature declares that the use of natural alcohol flavorings in an amount not to exceed the limit established in RCW 69.04.240 presents no threat to the public health and safety." [1984 c 78 § 1.]

Severability—1984 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 78 § 7.]

66.12.170 Obtaining liquor for manufacturing confections or food products. Nothing in this title shall be construed as limiting the right of any manufacturer of confections or food products from obtaining liquor from any source whatsoever if: (1) It is acquired pursuant to a permit issued under RCW 66.20.010(5); and (2) the applicable taxes imposed by this title are paid. [1984 c 78 § 4.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.12.180 Donations to and use of wine by Washington wine commission. The Washington wine commission created under RCW 15.88.030 may purchase or receive donations of wine from wineries and may use such wine for promotional purposes. Wine furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW 66.24.210. No license, permit, or bond is required of the Washington wine commission under this title for promotional activities conducted under chapter 15.88 RCW. [1993 c 160 § 1; 1987 c 452 § 14.]

Effective date—1993 c 160: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 160 § 3.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.12.190 Wine shipments from out of state—Limitations. Notwithstanding any other provision of Title 66 RCW, the holder of a license to manufacture wine in a state which affords holders of a Washington license issued under RCW 66.24.170 an equal reciprocal shipping privilege, may ship for personal use and not for resale not more than two cases of wine of its own manufacture per year, with each case containing not more than nine liters, to any state resident twenty-one years of age or older. Out-of-state wine manufacturers that are authorized to ship wine pursuant to RCW 66.12.190 through 66.12.220 shall first obtain a license from the Washington state liquor control board under procedures prescribed by rule of the board, before shipping wine into Washington. Delivery of a shipment under this section shall not be deemed to constitute a sale in this state. [1991 c 149 § 1.]

66.12.200 Out-of-state wine shipments—Labeling. The shipping container of any wine sent into or out of this state under RCW 66.12.190 shall be clearly labeled to indicate that the package cannot be delivered to a person under twenty-one years of age or to an intoxicated person. [1991 c 149 § 2.]

66.12.210 Wine shipments from out of state from unlicensed shipper—Penalties. Acceptance of any container of wine, by a person, that is shipped into this state to a person from a person who is not licensed as provided in RCW 66.12.190, shall constitute a civil violation and be subject to the penalties imposed by chapter 66.44 RCW [1994 c 70 § 1; 1991 c 149 § 3.]

66.12.220 Out-of-state wine shipper's license—Revocation. A license issued under RCW 66.12.190 to a wine manufacturer, shipper, or person located outside this state who, within this state, advertises for or solicits consumers to engage in interstate reciprocal wine shipment under RCW 66.12.190 through 66.12.220 shall be revoked. [1991 c 149 § 4.]

Chapter 66.16

STATE LIQUOR STORES

Sections	
66.16.010	Board may establish—Price standards—Prices in special instances.
66.16.030	Vendor to be in charge.
66.16.040	Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception
66.16.041	Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction—Report to legislature.
66.16.050	Sale of beer and wine to person licensed to sell.
66.16.060	Sealed packages may be required, exception.
66.16.070	Liquor cannot be opened or consumed on store premises.

66.16.080	Sunday closing.
66.16.090	Record of individual purchases confidential—Penalty for disclosure.
66.16.100	Fortified wine sales.
66.16.110	Birth defects from alcohol—Warning required.

66.16.010 Board may establish—Price standards—Prices in special instances. (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: PROVIDED, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals; and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

66.16.030 Vendor to be in charge. The sale of liquor at each state liquor store shall be conducted by a person employed under this title to be known as a "vendor," who shall, together with the employees under his direction, under the regulations of the board, be responsible for the carrying out of this title and the regulations, so far as they relate to the conduct of the store and the sale of liquor thereat. [1933 ex.s. c 62 § 6; RRS § 7306-6.]

66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception. Except as otherwise provided by law, an employee in a state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Liquor control authority card of identification of any state or province of Canada.

(2) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(3) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(4) Passport.

(5) Merchant Marine identification card issued by the United States Coast Guard.

The board may adopt such regulations as it deems proper covering the acceptance of such cards of identification.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution. [1996 c 291 § 1; 1995 c 16 § 1; 1981 1st ex.s. c 5 § 8; 1979 c 158 § 217; 1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 15 § 8.]

Renewal driver's license accepted as proper identification: RCW 46.20.185.

66.16.041 Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction—Report to legislature. (1) The state liquor control board shall accept bank credit card and debit cards from nonlicensees for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize liquor vendors appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a liquor vendor operating an agency store chooses to use credit or debit cards for liquor purchases by nonlicensees, the board shall provide equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to an agency liquor vendor store for this purpose may be used only for the purchase of liquor.

(3) If the revenues and expenditures associated with implementing the use of credit and debit cards for the purchase of alcohol by nonlicensees from state liquor stores and agency stores operated by liquor vendors results in a reduction of the liquor revolving fund balance for fiscal year 1999 and the 1999-01 biennium, the board shall consider increasing the price of alcohol products to offset the reduction.

(4) The board shall provide a report evaluating the implementation of this section, including revenue and expenditures, to the appropriate committees of the legislature by December 1, 1998. [1998 c 265 § 3; 1997 c 148 § 2; 1996 c 291 § 2.]

Intent—1998 c 265: "It is the intent of the legislature that expenditures associated with the implementation of using credit and debit cards in state liquor stores and agency liquor vendor stores not have a negative impact to the liquor revolving fund balance and that transfers to the state general fund, the cities, and the counties not be reduced because of these costs." [1998 c 265 § 1.]

66.16.050 Sale of beer and wine to person licensed to sell. An employee may sell beer and wines to any licensee holding a license to sell under this title in accordance with the terms of said license. [1933 ex.s. c 62 § 8; RRS § 7306-8.]

66.16.060 Sealed packages may be required, exception. The board may in its discretion by regulation prescribe that any or all liquors other than malt liquor shall be delivered to any purchaser at a state liquor store only in a package sealed with the official seal. [1943 c 216 § 1; 1933 ex.s. c 62 § 9; RRS § 7306-9.]

66.16.070 Liquor cannot be opened or consumed on store premises. No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises. [1933 ex.s. c 62 § 10; RRS § 7306-10.]

66.16.080 Sunday closing. No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor, on Sunday, unless the board determines that unique circumstances exist which necessitate Sunday liquor sales by vendors appointed under RCW 66.08.050(2) of products of their own manufacture, not to exceed one case of liquor per customer. [1988 c 101 § 1; 1933 ex.s. c 62 § 11; RRS § 7306-11.]

66.16.090 Record of individual purchases confidential—Penalty for disclosure. All records whatsoever of the board showing purchases by any individual of liquor shall be deemed confidential, and, except subject to audit by the state auditor, shall not be permitted to be inspected by any person whatsoever, except by employees of the board to the extent permitted by the regulations; and no member of the board and no employee whatsoever shall give out any information concerning such records and neither such records nor any information relative thereto which shall make known the name of any individual purchaser shall be competent to be admitted as evidence in any court or courts except in prosecutions for illegal possession of and/or sale of liquor. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1933 ex.s. c 62 § 89; RRS § 7306-89.]

66.16.100 Fortified wine sales. No state liquor store in a county with a population over three hundred thousand may sell fortified wine if the board finds that the sale would be against the public interest based on the factors in RCW 66.24.360. The burden of establishing that the sale would be against the public interest is on those persons objecting. [1997 c 321 § 42; 1987 c 386 § 5.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.16.110 Birth defects from alcohol—Warning required. The board shall cause to be posted in conspicuous places, in a number determined by the board, within each state liquor store, notices in print not less than one inch high warning persons that consumption of alcohol shortly before conception or during pregnancy may cause birth defects, including fetal alcohol syndrome and fetal alcohol effects. [1993 c 422 § 2.]

Reviser's note: 1993 c 422 directed that this section be added to chapter 66.08 RCW. This section has been codified in chapter 66.16 RCW, which relates more directly to liquor stores.

Finding—1993 c 422: "The United States surgeon general warns that women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. The legislature finds that these defects include fetal alcohol syndrome, a birth defect that causes permanent antisocial behavior in the sufferer, disrupts the functions of his or her family, and, at an alarmingly increasing rate, extracts a safety and fiscal toll on society." [1993 c 422 § 1.]

Intent—1993 c 422: See RCW 70.83C.005.

Chapter 66.20 LIQUOR PERMITS

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66.20.340	Alcohol servers—Violation of rules—Penalties.
66.20.350	Alcohol servers—Deposit of fees.

66.20.010 Permits classified—Issuance—Fees. Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be

prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit;

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit;

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit;

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a non-profit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a hotel or similar facility offering from one to eight lodging units and breakfast to travelers and guests. [1998 c 126 § 1; 1997 c 321 § 43; 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

Effective date—1998 c 126: "This act takes effect July 1, 1998." [1998 c 126 § 17]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.20.020 Permits not transferable—False name or address prohibited—Sacramental liquor, wine. (1) Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

(2) No person shall apply in any false or fictitious name for the issuance to him of a permit, and no person shall furnish a false or fictitious address in his application for a permit.

(3) Nothing in this title shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining wine for sacramental purposes directly from any source whatsoever, whether from within the limits of the state of Washington or from outside the state; nor shall any fee be charged, directly or indirectly, for the exercise of this right. The board shall have the power and authority to make reasonable rules and regulations concerning the importing of any such liquor or wine, for the purpose of preventing any unlawful use of such right. [1933 ex.s. c 62 § 13; RRS § 7306-13. Formerly RCW 66.12.100, 66.20.020, and 66.20.030.]

66.20.040 Applicant must sign permit. No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purposes of identification as the holder thereof, in the presence of the employee to whom the application is made. [1933 ex.s. c 62 § 14; RRS § 7306-14.]

66.20.060 Duration. Every permit issued for use after October 1, 1955, shall expire at midnight on the thirtieth day

of June of the fiscal year for which the permit was issued, except special permits for banquets and special permits to physicians, dentists, or persons in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people. [1955 c 180 § 1; 1935 c 174 § 1; 1933 ex.s. c 62 § 16; RRS § 7306-16.]

66.20.070 Suspension or cancellation. Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit. [1933 ex.s. c 62 § 17; RRS § 7306-17.]

66.20.080 Surrender of suspended or canceled permit—New permit, when. Upon receipt of notice of the suspension or cancellation of his permit, the holder of the permit shall forthwith deliver up the permit to the board. Where the permit has been suspended only, the board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or canceled, no employee shall knowingly issue to the person whose permit is suspended or canceled a permit under this title until the end of the period of suspension or within the period of one year from the date of cancellation. [1933 ex.s. c 62 § 18; RRS § 7306-18.]

66.20.085 License suspension—Noncompliance with support order—Reissuance. The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 861.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

66.20.090 Retaining permits wrongfully presented. Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or canceled is presented to an employee, the employee shall retain the permit in his custody and shall

forthwith notify the board of the fact of its retention. [1933 ex.s. c 62 § 19; RRS § 7306-19.]

66.20.100 Physician may prescribe or administer liquor—Penalty. Any physician who deems liquor necessary for the health of a patient, whether an interdicted person or not, whom he has seen or visited professionally may give to the patient a prescription therefor, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician may administer the liquor purchased by him under special permit and may charge for the liquor so administered; but no prescription shall be given or liquor be administered by a physician except to bona fide patients in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary; and any physician who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 20; RRS § 7306-20.]

66.20.110 Dentist may administer liquor—Penalty. Any dentist who deems it necessary that any patient then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor obtained by him under special permit pursuant to this title, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to bona fide patients in cases of actual need; and every dentist who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 21; RRS § 7306-21.]

66.20.120 Hospital, etc., may administer liquor—Penalty. Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this title for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 22; RRS § 7306-22.]

66.20.140 Limitation on application after cancellation or suspension. No person whose permit has been canceled within the period of twelve months next preceding, or is suspended, shall make application to any employee under this title for another permit. [1933 ex.s. c 62 § 40; RRS § 7306-40.]

66.20.150 Purchases prohibited under canceled, suspended permit or under another's permit. No person shall purchase or attempt to purchase liquor under a permit

which is suspended, or which has been canceled, or of which he is not the holder. [1933 ex.s. c 62 § 41; RRS § 7306-41.]

66.20.160 "Card of identification", "licensee", "store employee" defined for certain purposes. Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store or agency to sell liquor. [1973 1st ex.s. c 209 § 4; 1971 ex.s. c 15 § 2; 1959 c 111 § 4; 1949 c 67 § 1; Rem. Supp. 1949 § 7306-19A.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.170 Card of identification may be accepted as identification card and evidence of legal age. A card of identification may for the purpose of this title and for the purpose of procuring liquor, be accepted as an identification card by any licensee or store employee and as evidence of legal age of the person presenting such card, provided the licensee or store employee complies with the conditions and procedures prescribed herein and such regulations as may be made by the board. [1973 1st ex.s. c 209 § 5; 1971 ex.s. c 15 § 3; 1959 c 111 § 5; 1949 c 67 § 2; Rem. Supp. 1949 § 7306-19B.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.180 Card of identification to be presented on request of licensee. A card of identification shall be presented by the holder thereof upon request of any licensee, store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or agency. [1973 1st ex.s. c 209 § 6; 1971 ex.s. c 15 § 4; 1959 c 111 § 6; 1949 c 67 § 3; Rem. Supp. 1949 § 7306-19C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.190 Identification card holder may be required to sign certification card—Contents—Procedure—Statement. In addition to the presentation by the holder and verification by the licensee or store employee of such card of identification, the licensee or store employee who is still in doubt about the true age of the holder shall require the person whose age may be in question to sign a certification card and record an accurate description and serial number of his card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee or store employee at or

before the close of business on the day on which the statement is executed, in the file box containing a suitable alphabetical index and the card shall be subject to examination by any peace officer or agent or employee of the board at all times. The certification card shall also contain in bold-face type a statement stating that the signer understands that conviction for unlawful purchase of alcoholic beverages or misuse of the certification card may result in criminal penalties including imprisonment or fine or both. [1981 1st ex.s. c 5 § 9; 1975 1st ex.s. c 173 § 4; 1973 1st ex.s. c 209 § 7; 1971 ex.s. c 15 § 5; 1959 c 111 § 7; 1949 c 67 § 4; Rem. Supp. 1949 § 7306-19D.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.200 Unlawful acts relating to card of identification and certification card—Penalties. It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his or her card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee or gain admission to a premises or portion of a premises classified by the board as off-limits to persons under twenty-one years of age, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service. Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification, and any person who possesses a card of identification not issued to him or her, and any person who makes any false statement on any certification card required by RCW 66.20.190, as now or hereafter amended, to be signed by him or her, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service. [1994 c 201 § 1; 1987 c 101 § 4; 1973 1st ex.s. c 209 § 8; 1971 ex.s. c 15 § 6; 1969 ex.s. c 178 § 2; 1959 c 111 § 8; 1949 c 67 § 5; Rem. Supp. 1949 § 7306-19E.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.
Unlawful transfer to a minor of an identification of age: RCW 66.44.325.

66.20.210 Licensee's immunity to prosecution or suit—Certification card as evidence of good faith. No licensee or the agent or employee of the licensee, or store employee, shall be prosecuted criminally or be sued in any civil action for serving liquor to a person under legal age to purchase liquor if such person has presented a card of

identification in accordance with RCW 66.20.180, and has signed a certification card as provided in RCW 66.20.190.

Such card in the possession of a licensee may be offered as a defense in any hearing held by the board for serving liquor to the person who signed the card and may be considered by the board as evidence that the licensee acted in good faith. [1973 1st ex.s. c 209 § 9; 1971 ex.s. c 15 § 7; 1959 c 111 § 9; 1949 c 67 § 6; Rem. Supp. 1949 § 7306-19F.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.300 Alcohol servers—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person serving or selling alcohol, spirits, wines, or beer for consumption at an on-premises retail licensed facility as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, and 66.24.570. [1997 c 321 § 44; 1996 c 218 § 2; 1995 c 51 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Findings—1995 c 51: "The legislature finds that education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program." [1995 c 51 § 1.]

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. (1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every person employed, under contract or otherwise, by an annual retail liquor licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, or 66.24.570,

who as part of his or her employment participates in any manner in the sale or service of alcoholic beverages shall have issued to them a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) No licensee described in (a) of this subsection, except as provided in (d) of this subsection, may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350. [1997 c 321 § 45. Prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.320 Alcohol servers—Education program—Fees—Issuance of permits. (1) The board shall regulate a required alcohol server education program that includes:

(a) Development of the curriculum and materials for the education program;

(b) Examination and examination procedures;

(c) Certification procedures, enforcement policies, and penalties for education program instructors and providers;

(d) The curriculum for an approved class 12 alcohol permit training program that includes but is not limited to the following subjects:

(i) The physiological effects of alcohol including the effects of alcohol in combination with drugs;

(ii) Liability and legal information;

(iii) Driving while intoxicated;

(iv) Intervention with the problem customer, including ways to stop service, ways to deal with the belligerent customer, and alternative means of transportation to get the customer safely home;

(v) Methods for checking proper identification of customers;

(vi) Nationally recognized programs, such as TAM (Techniques in Alcohol Management) and TIPS (Training for Intervention Programs) modified to include Washington laws and regulations.

(2) The board shall provide the program through liquor licensee associations, independent contractors, private persons, private or public schools certified by the board, or any combination of such providers.

(3) Each training entity shall provide a class 12 permit to the manager or bartender who has successfully completed a course the board has certified. A list of the individuals receiving the class 12 permit shall be forwarded to the board on the completion of each course given by the training entity.

(4) After January 1, 1997, the board shall require all alcohol servers applying for a class 13 alcohol server permit to view a video training session. Retail liquor licensees shall fully compensate employees for the time spent participating in this training session.

(5) When requested by a retail liquor licensee, the board shall provide copies of videotaped training programs that have been produced by private vendors and make them available for a nominal fee to cover the cost of purchasing and shipment, with the fees being deposited in the liquor revolving fund for distribution to the board as needed.

(6) Each training entity may provide the board with a video program of not less than one hour that covers the subjects in subsection (1)(d)(i) through (v) of this section that will be made available to a licensee for the training of a class 13 alcohol server.

(7) Applicants shall be given a class 13 permit upon the successful completion of the program.

(8) A list of the individuals receiving the class 13 permit shall be forwarded to the board on the completion of each video training program.

(9) The board shall develop a model permit for the class 12 and 13 permits. The board may provide such permits to training entities or licensees for a nominal cost to cover production.

(10)(a) Persons who have completed a nationally recognized alcohol management or intervention program

since July 1, 1993, may be issued a class 12 or 13 permit upon providing proof of completion of such training to the board.

(b) Persons who completed the board's alcohol server training program after July 1, 1993, but before July 1, 1995, may be issued a class 13 permit upon providing proof of completion of such training to the board. [1996 c 311 § 2; 1995 c 51 § 4.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.330 Alcohol servers—Rules. The board shall adopt rules to implement RCW 66.20.300 through 66.20.350 including, but not limited to, procedures and grounds for denying, suspending, or revoking permits. [1995 c 51 § 5.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.340 Alcohol servers—Violation of rules—Penalties. A violation of any of the rules of the board adopted to implement RCW 66.20.300 through 66.20.350 is a misdemeanor, punishable by a fine of not more than two hundred fifty dollars for a first offense. A subsequent offense is punishable by a fine of not more than five hundred dollars, or imprisonment for not more than ninety days, or both the fine and imprisonment. [1995 c 51 § 6.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.350 Alcohol servers—Deposit of fees. Fees collected by the board under RCW 66.20.300 through 66.20.350 shall be deposited in the liquor revolving fund in accordance with RCW 66.08.170. [1995 c 51 § 7.]

Findings—1995 c 51: See note following RCW 66.20.300.

Chapter 66.24

LICENSES—STAMP TAXES

Sections

66.24.010	Issuance, transferability, refusal, suspension, or cancellation—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses.
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Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses. (1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8) Before the board shall issue a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application be for a license within an incorporated city or town, or to the county legislative authority, if the application be for a license outside the boundaries of incorporated cities or towns; and such incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the

applicant or against the premises for which the license is asked, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of Title 34 RCW. Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(9) Before the board issues any license to any applicant, it shall give (a) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license for either on-premises or off-premises consumption or wine retailer license for either on-premises or off-premises consumption or spirits, beer, and wine restaurant license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no

case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant assuming an existing retail or distributor license to continue the operation of the retail or distributor premises during the period the application for the license is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or distributor license within ninety days of the date of filing the application for a temporary license;

(b) The retail or distributor license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application to assume the retail or distributor license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full. [1998 c 126 § 2. Prior: 1997 c 321 § 1; 1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. FORMER PART OF SECTION: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: "This act takes effect July 1, 1998." [1997 c 321 § 64.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.]

(1998 Ed)

66.24.012 License suspension—Noncompliance with support order—Reissuance. The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 862.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

66.24.015 Nonrefundable application fee for retail license. An application for a new annual retail license under this title shall be accompanied by payment of a nonrefundable seventy-five dollar fee to cover expenses incurred in processing the application. If the application is approved, the application fee shall be applied toward the fee charged for the license. [1988 c 200 § 4.]

66.24.025 Transfer of license—Fee—Exception—Corporate changes, approval—Fee. (1) If the board approves, a license may be transferred, without charge, to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties.

(2) The proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made. A fee of seventy-five dollars will be charged for the processing of such change of stock ownership and/or corporate officers. [1995 c 232 § 2; 1981 1st ex.s. c 5 § 11; 1973 1st ex.s. c 209 § 11; 1971 c 70 § 2; 1937 c 217 § 1 (23U) (adding new section 23-U to 1933 ex.s. c 62); RRS § 7306-23U.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070

Effective date—1971 c 70: See note following RCW 66.24.010.

66.24.120 Vacation of suspension on payment of penalty. The board in suspending any license may further provide in the order of suspension that such suspension shall be vacated upon payment to the board by the licensee of a monetary penalty in an amount then fixed by the board. [1973 1st ex.s. c 209 § 12; 1939 c 172 § 7 (adding new section 27-C to 1933 ex.s. c 62); RRS § 7306-27C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.140 Distiller's license—Fee. There shall be a license to distillers, including blending, rectifying and bottling; fee two thousand dollars per annum: PROVIDED, That the board shall license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale, at a fee of twenty dollars per annum: PROVIDED, FURTHER, That the board shall license stills used and to be used solely and only for laboratory purposes in any school, college or educational institution in the state, without fee: PROVIDED, FURTHER, That the board shall license stills which shall have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of two hundred dollars per annum. [1981 1st ex.s. c 5 § 28; 1937 c 217 § 1 (23D) (adding new section 23-D to 1933 ex.s. c 62); RRS § 7306-23D.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.150 Manufacturer's license—Scope—Fee. There shall be a license to manufacturers of liquor, including all kinds of manufacturers except those licensed as distillers, domestic brewers, microbreweries, wineries, and domestic wineries, authorizing such licensees to manufacture, import, sell, and export liquor from the state; fee five hundred dollars per annum. [1997 c 321 § 2; 1981 1st ex.s. c 5 § 29; 1937 c 217 § 1 (23A) (adding new section 23-A to 1933 ex.s. c 62); RRS § 7306-23A.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.160 Liquor importer's license—Fee. A liquor importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state; fee six hundred dollars per annum. Such liquor importer's license shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and shall be issued only upon such terms and conditions as may be imposed by the board. No liquor importer's license shall be required in sales to the Washington state liquor control board. [1981 1st ex.s. c 5 § 30; 1970 ex.s. c 13 § 1. Prior: 1969 ex.s. c 275 § 2; 1969 ex.s. c 21 § 1; 1937 c 217 § 1 (23J) (adding new section 23-J to 1933 ex.s. c 62); RRS § 7306 (23J).]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Domestic wine made into sparkling wine. (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty

thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a distributor and/or retailer of wine of its own production. Any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(4) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.185 Bonded wine warehouse storage license—Qualifications and requirements—Fee. (1) There shall be a license for bonded wine warehouses which shall authorize the storage of bottled wine only. Under this license a licensee may maintain a warehouse for the storage of wine off the premises of a winery.

(2) The board shall adopt similar qualifications for a bonded wine warehouse license as required for obtaining a domestic winery license as specified in RCW 66.24.010 and 66.24.170. A licensee must be a sole proprietor, a partnership, a limited liability company, or a corporation. One or more domestic wineries may operate as a partnership, corporation, business co-op, or agricultural co-op for the purposes of obtaining a bonded wine warehouse license.

(3) All bottled wine shipped to a bonded wine warehouse from a winery or another bonded wine warehouse shall remain under bond and no tax imposed under RCW 66.24.210 shall be due, unless the wine is removed from bond and shipped to a licensed Washington wine distributor. Wine may be removed from a bonded wine warehouse only for the purpose of being (a) exported from the state, (b) shipped to a licensed Washington wine distributor, or (c) returned to a winery or bonded wine warehouse.

(4) Warehousing of wine by any person other than (a) a licensed domestic winery or a bonded wine warehouse licensed under the provisions of this section, (b) a licensed Washington wine distributor, (c) a licensed Washington wine importer, (d) a wine certificate of approval holder (W7), or (e) the liquor control board, is prohibited.

(5) A license applicant shall hold a federal permit for a bonded wine cellar and post a continuing wine tax bond in the amount of five thousand dollars in a form prescribed by the board prior to the issuance of a bonded wine warehouse license. The fee for this license shall be one hundred dollars per annum.

(6) The board shall adopt rules requiring a bonded wine warehouse to be physically secure, zoned for the intended use and physically separated from any other use.

(7) Every licensee shall submit to the board a monthly report of movement of bottled wines to and from a bonded wine warehouse in a form prescribed by the board. The board may adopt other necessary procedures by which bonded wine warehouses are licensed and regulated. [1997 c 321 § 4; 1984 c 19 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.200 Wine distributor's license—Fee. There shall be a license for wine distributors to sell wine, purchased from licensed Washington wineries, wine certificate of approval holders (W7), licensed wine importers, or suppliers of foreign wine located outside the state of Washington, to licensed wine retailers and other wine distributors and to export the same from the state; fee six hundred sixty dollars per year for each distributing unit. [1997 c 321 § 5; 1981 1st ex.s. c 5 § 32; 1969 ex.s. c 21 § 2; 1937 c 217 § 1 (23K) (adding new section 23-K to 1933 ex.s. c 62); RRS § 7306-23K.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.203 Wine importer's license—Principal office—Report—Labels—Fee. There shall be a license for wine importers that authorizes the licensee to import wine manufactured within the United States by certificate of approval holders (W7) into the state of Washington. The licensee may also import wine manufactured outside the United States.

(1) Wine so imported may be sold to licensed wine distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a wine importer shall establish and maintain a principal office within the state at which shall be kept proper records of all wine imported into the state under this license.

(3) No wine importer's license shall be granted to a nonresident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a wine importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of wine sold or delivered to each licensed wine distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Wine imported under this license must conform to the provisions of RCW 66.28.110 and have received label approval from the board. The board shall not certify wines labeled with names that may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic winery or imported nor wines that fail to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [1997 c 321 § 6.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.206 Certificate of approval required for out-of-state winery or manufacturer to sell or ship to Washington distributors or importers—Reports—Agreement with board—Fee. A United States winery or manufacturer of wine, located outside the state of Washington, must hold a certificate of approval (W7) to allow sales and shipment of the certificate of approval holder's wine to licensed Washington wine distributors or importers. The certificate of approval shall not be granted unless and until such winery or manufacturer of wine shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine distributor or importer, during the preceding month, and shall further have agreed with the board, that such wineries or manufacturers, and all general sales corporations or agencies maintained by them, and all of their trade representatives, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per year, which sum shall accompany the application for such certificate. [1997 c 321 § 7; 1981 1st ex.s. c 5 § 34; 1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.210 Imposition of taxes on all wines and cider sold to wine distributors and liquor control board—Additional taxes imposed—Distributions. (1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such

person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. The additional taxes imposed by this subsection (3) shall cease to be imposed on July 1, 2001. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(37) when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the health services account under RCW 43.72.900.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must. [1997 c 321 § 8; 1996 c 118 § 1; 1995 c 232 § 3; 1994 sp.s. c 7 § 901 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 160 § 2; 1991 c 192 § 3; 1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220, and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1996 c 118: "This act shall take effect July 1, 1996." [1996 c 118 § 2.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: "Sections 901 through 909, chapter 7, Laws of 1994 sp. sess. shall be submitted as a single ballot measure to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof unless section 13, chapter 2, Laws of 1994, has been declared invalid or otherwise enjoined or stayed by a court of competent jurisdiction." [1994 sp.s. c 7 § 911 (Referendum Bill No. 43, approved November 8, 1994).]

Reviser's note: Sections 901 through 909, chapter 7, Laws of 1994 sp. sess., were adopted and ratified by the people at the November 8, 1994, general election.

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

Effective date—1993 c 160: See note following RCW 66.12.180.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Floor stocks tax: "There is hereby imposed upon every licensed wine distributor who possesses wine for resale upon which the tax has not been paid under section 2, chapter 204, Laws of 1973, a floor stocks tax of sixty-five cents per wine gallon on wine in his or her possession or under his or her control on June 30, 1973. Each such distributor shall within twenty days after June 30, 1973, file a report with the Washington state liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1997 c 321 § 9; 1973 1st ex.s. c 204 § 3.]

Effective date—1973 1st ex.s. c 204: See note following RCW 82.08.150.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

Giving away liquor prohibited—Exceptions: RCW 66.28.040.

No tax on wine shipped to bonded warehouse: RCW 66.24.185.

66.24.215 Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation. (1) To provide for permanent funding of the wine commission after July 1, 1989, agricultural commodity assessments shall be levied by the board on wine producers and growers as follows:

(a) Beginning on July 1, 1989, the assessment on wine producers shall be two cents per gallon on sales of packaged Washington wines.

(b) Beginning on July 1, 1989, the assessment on growers of Washington vinifera wine grapes shall be levied as provided in RCW 15.88.130.

(c) After July 1, 1993, assessment rates under subsection (1)(a) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of wine producers. The weight of each producer's vote shall be equal to the percentage of that producer's share of Washington vinifera wine production in the prior year.

(d) After July 1, 1993, assessment amounts under subsection (1)(b) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of grape growers. The weight of each grower's vote shall be equal to the percentage of that grower's share of Washington vinifera grape sales in the prior year.

(2) Assessments collected under this section shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(3) Prior to July 1, 1996, a referendum shall be conducted to determine whether to continue the Washington wine commission as representing both wine producers and grape growers. The voting shall not be weighted. The wine producers shall vote whether to continue the commission's coverage of wineries and wine production. The grape producers shall vote whether to continue the commission's coverage of issues pertaining to grape growing. If a majority of both wine and grape producers favor the continuation of the commission, the assessments shall continue as provided in subsection (2)(b) and (d) of this section. If only one group of producers favors the continuation, the assessments shall only be levied on the group which favored the continuation. [1988 c 257 § 7; 1987 c 452 § 13.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.24.230 Monthly reports of winery, wine importer, and wine distributor—Prohibited, authorized sales. Every winery, wine importer, and wine distributor licensed under this title shall make monthly reports to the board pursuant to the regulations. Such winery, wine importer, and wine distributor shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [1997 c 321 § 10; 1969 ex.s. c 21 § 4; 1933 ex.s. c 62 § 25; RRS § 7306-25. Formerly RCW 66.24.210 and 66.24.230. FORMER PART OF SECTION: 1943 c 216 § 2, part, now codified in RCW 66.24.210.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.240 Domestic brewery's license—Fee—Breweries operating as distributors and/or retailers. (1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. [1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.244 Microbrewery's license—Endorsement for on-premises consumption—Fees—Determination of status

as tavern or beer and/or wine restaurant. (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor per year.

(2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer of its own production. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(3) The board may issue an endorsement to this license allowing for on-premises consumption of beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4) The microbrewer obtaining such endorsement must determine, at the time the endorsement is issued, whether the licensed premises will be operated either as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320. [1998 c 126 § 3; 1997 c 321 § 12.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.250 Beer distributor's license—Fee. There shall be a license for beer distributors to sell beer, purchased from licensed Washington breweries, beer certificate of approval holders (B5), licensed beer importers, or suppliers of foreign beer located outside the state of Washington, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit. [1997 c 321 § 13; 1981 1st ex.s. c 5 § 14; 1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.261 Beer importer's license—Principal office—Report—Labels—Fee. There shall be a license for beer importers that authorizes the licensee to import beer manufactured within the United States by certificate of approval holders (B5) into the state of Washington. The licensee may also import beer manufactured outside the United States.

(1) Beer so imported may be sold to licensed beer distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a beer importer shall establish and maintain a principal office within the state at which shall be kept proper records of all beer imported into the state under this license.

(3) No beer importer's license shall be granted to a nonresident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a

report under oath, detailing the quantity of beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported nor beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [1997 c 321 § 14.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.270 Manufacturer's monthly report to board of quantity of malt liquor sales made to beer distributors—Certificate of approval and report for out-of-state or imported beer—Fee. (1) Every person, firm or corporation, holding a license to manufacture malt liquors within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors sold for resale during the preceding calendar month to each beer distributor within the state of Washington.

(2) A United States brewery or manufacturer of beer, located outside the state of Washington, must hold a certificate of approval (B5) to allow sales and shipment of the certificate of approval holder's beer to licensed Washington beer distributors or importers. The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer sold or delivered to each licensed beer distributor or importer during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of beer and all general sales corporations or agencies maintained by them, and all of their trade representatives, corporations, and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per year, which sum shall accompany the application for such certificate. [1997 c 321 § 15; 1981 1st ex.s. c 5 § 35; 1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes. (1) Any microbrewer or domestic brewery or beer distributor licensed under this title may sell and deliver beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewery or beer distributor shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons. Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer shall be sold by breweries and distributors in sealed barrels or packages. The moneys collected under this subsection shall be distributed as follows: (a) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (b) of the remaining moneys: (i) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (ii) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(2) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the health services account under RCW 43.72.900.

(4) An additional tax is imposed on all beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distribut-

ed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) The tax imposed under this section shall not apply to "strong beer" as defined in this title. [1997 c 451 § 1; 1997 c 321 § 16; 1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

Reviser's note: This section was amended by 1997 c 321 § 16 and by 1997 c 451 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1997 c 451: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 451 § 5]

Effective date—1997 c 321: See note following RCW 66.24.010.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

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

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1965 ex.s. c 173: See note following RCW 82.98.030. *Giving away of liquor prohibited—Exceptions:* RCW 66.28.040.

66.24.300 Refunds for taxes paid on exported beer—Bond securing tax payment. (1) The board may make refunds for all taxes paid on beer exported from the state for use outside the state.

(2) The board shall require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his license until all taxes are paid. [1995 c 232 § 5; 1951 c 93 § 1; 1937 c 217 § 2 (adding new section 24-B to 1933 ex.s. c 62); RRS § 7306-24B.]

66.24.305 Refunds of taxes on unsalable wine and beer. The board may refund the tax on wine imposed by RCW 66.24.210, and the tax on beer imposed by RCW 66.24.290, when such taxpaid products have been deemed to be unsalable and are destroyed within the state in accordance with procedures established by the board. [1975 1st ex.s. c 173 § 11.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.24.310 Representative's license—Qualifications—Conditions and restrictions—Fee. (1) No person shall canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in

goodwill activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a microbrewer's license, a domestic brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, and shall have applied for and received a representative's license: **PROVIDED, HOWEVER,** That the provisions of this section shall not apply to drivers who deliver beer or wine;

(2) Every representative's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly market, may limit the number of representative's licenses issued for representation of specific classes of eligible employers;

(3) Every application for a representative's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a licensed beer distributor, a licensed domestic brewer, a licensed beer importer, a licensed microbrewer, a licensed domestic winery, a licensed wine importer, a licensed wine distributor, or by a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require;

(4) The fee for a representative's license shall be twenty-five dollars per year;

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may, after he or she has applied for and received a representative's license, contact retail licensees of the board only in goodwill activities pertaining to spirituous liquor products. [1997 c 321 § 17; 1981 1st ex.s. c 5 § 36; 1975-'76 2nd ex.s. c 74 § 1; 1971 ex.s. c 138 § 1; 1969 ex.s. c 21 § 5; 1939 c 172 § 2; 1937 c 217 § 1 (23I) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-23I.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1975-'76 2nd ex.s. c 74: "The effective date of this 1976 amendatory act shall be July 1, 1976." [1975-'76 2nd ex.s. c 74 § 4.]

Effective date—1969 ex.s. c 21: See note following RCW 64.04.010.

66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement. There shall be a beer and/or wine restaurant license to sell beer or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at special occasion locations at a

specified date and place not currently licensed by the board. The privilege of selling and serving liquor under the endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived. [1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.330 Tavern license—Fees. There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license. Licensees who have a fee increase of more than one hundred dollars as a result of this change shall have their fees increased fifty percent of the amount the first renewal year and the remaining amount beginning with the second renewal period. New licensees obtaining a license after July 1, 1998, shall pay the full amount of four hundred dollars. [1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.350 Snack bar license—Fee. There shall be a beer retailer's license to be designated as a snack bar license to sell beer by the opened bottle or can at retail, for consumption upon the premises only, such license to be issued to places where the sale of beer is not the principal business

conducted; fee one hundred twenty-five dollars per year. [1997 c 321 § 20; 1991 c 42 § 3; 1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee. There shall be a beer and wine retailer's license that may be combined only with the on-premises licenses described in either RCW 66.24.320 or 66.24.330. The combined license permits the sale of beer and wine for consumption off the premises.

(1) Beer and wine sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler.

(2) Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale.

(3) Licensees holding this type of license also may sell malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200.

(4) The board may impose conditions upon the issuance of this license to best protect and preserve the health, safety, and welfare of the public.

(5) The annual fee for this license shall be one hundred twenty dollars. [1997 c 321 § 21.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—International export endorsement. There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing fortified wine at the establishment; and

(c) Whether the sale of fortified wine would be detrimental to or inconsistent with a government-operated or

funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer and wine.

(a) Any beer or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.

(d) Any beer or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license. [1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing fortified wine at the establishment; and

(c) Whether the sale of fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer and/or wine. [1997 c 321 § 23.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.375 "Society or organization" defined for certain purposes. "Society or organization" as used in RCW 66.24.380 means a not-for-profit group organized and operated solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes. No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the secretary of state or the federal internal revenue service as a nonprofit organization may submit such registration as proof that it is a not-for-profit group. [1997 c 321 § 61; 1981 c 287 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1981 c 287: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 287 § 3.]

66.24.380 Special occasion license—Fee—Penalty. There shall be a retailer's license to be designated as a special occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year.

(2) The licensee may sell beer and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) Spirituous liquor sold under this special occasion license must be purchased at a state liquor store or agency without discount at retail prices, including all taxes.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW [1997 c 321 § 24; 1988 c 200 § 2; 1981 1st ex.s. c 5 § 43; 1973 1st ex.s. c 209 § 17; 1969 ex.s. c 178 § 5; 1937 c 217 § 1 (23S) (adding new section 23-S to 1933 ex.s. c 62); RRS § 7306-23S.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

"Society or organization" defined for certain purposes: RCW 66.24.375.

66.24.395 Interstate common carrier's licenses—

Class CCI—Fees—Scope. (1)(a) There shall be a license that may be issued to corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes. Such license shall permit the sale of spirituous liquor, wine, and beer at retail for passenger consumption within the state upon one such train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Such license shall include the privilege of transporting into and storing within the state such liquor for subsequent retail sale to passengers in passenger train cars, vessels or airplanes. The fees for such master license shall be seven hundred fifty dollars per annum (class CCI-1): **PROVIDED**, That upon payment of an additional sum of five dollars per annum per car, or vessel, or airplane, the privileges authorized by such license classes shall extend to additional cars, or vessels, or airplanes operated by the same licensee within the state, and a duplicate license for each additional car, or vessel, or airplane shall be issued: **PROVIDED, FURTHER**, That such licensee may make such sales and/or service upon cars, or vessels, or airplanes in emergency for not more than five consecutive days without such license: **AND PROVIDED, FURTHER**, That such license shall be valid only while such cars, or vessels, or airplanes are actively operated as common carriers for hire in interstate commerce and not while they are out of such common carrier service.

(b) Alcoholic beverages sold and/or served for consumption by such interstate common carriers while within or over the territorial limits of this state shall be subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: **PROVIDED**, That the board's markup shall be applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state,

subject to the conditions provided in subsection (1)(b) of this section. The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [1997 c 321 § 25; 1981 1st ex.s. c 5 § 44; 1975 1st ex.s. c 245 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when.

There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only: **PROVIDED**, That a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club: **PROVIDED FURTHER**, That a patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title. [1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1986 c 208: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on May 1, 1986." [1986 c 208 § 2]

Severability—1949 c 5: See RCW 66.98.080.

66.24.410 Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined. (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains:

PROVIDED, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in chapter 66.04 RCW: PROVIDED, That any such hotel shall be provided with special space and accommodations where, in consideration of payment, food is habitually furnished to the public: PROVIDED FURTHER, That the board shall be satisfied that such hotel is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders, sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition. [1983 c 3 § 164; 1981 1st ex.s. c 5 § 17; 1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,000
50% or more dedicated dining area	\$1,600
Service bar only	\$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FURTHER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly or privately owned civic or convention center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FURTHER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a spirits, beer, and wine restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each

fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under such endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived. [1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2. Prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Effective date—1998 c 126: See note following RCW 66.20.010

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.425 Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public. (1) The board may, in its discretion, issue a spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap. [1998 c 126 § 7; 1997 c 321 § 28; 1982 c 85 § 3.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, and sports entertainment facility license—Purchase of liquor by licensees—Discount. Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [1998 c 126 § 8; 1997 c 321 § 29; 1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1949 c 5: See RCW 66.98.080.

66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee. (1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the *private club, as defined in RCW 66.04.010(7).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

(3) The board may issue an endorsement to the **full service private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose

of the event. [1998 c 126 § 9; 1998 c 114 § 1; 1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

Reviser's note: *(1) "Club" is defined in RCW 66.04.010(7).

***(2) "Full service private club license" was renamed "spirits, beer, and wine private club license" by 1998 c 126.

(3) This section was amended by 1998 c 114 § 1 and by 1998 c 126 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1998 c 114: "This act takes effect July 1, 1998." [1998 c 114 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.452 Private club beer and wine license—Fee.

(1) There shall be a beer and wine license to be issued to a private club for sale of beer and wine for on-premises consumption.

(2) Beer and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year. [1997 c 321 § 31.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licensees. Subject to approval by the board, holders of beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licenses may extend their premises for the sale, service, and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility. [1998 c 126 § 10; 1997 c 321 § 32; 1994 c 201 § 2; 1974 ex.s. c 65 § 1.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.480 Bottle clubs—License required. "Bottle club" means a club or association operating for profit or otherwise and conducting or maintaining premises in which the members or other persons may resort for the primary or incidental purpose of keeping or consuming liquor on the premises.

Except as permitted under a license issued by the Washington state liquor control board, it is unlawful for any person to conduct or maintain by himself or by associating with others, or to in any manner aid, assist, or abet in conducting or maintaining a bottle club. [1951 c 120 § 2 (adding a new section to Title 66 RCW).]

Reviser's note: As to the constitutionality of this section, see *Derby Club v. Beckett*, 41 Wn. 2d 869 (1953).

66.24.481 Public place or club—License or permit required—Penalty. No public place or club, or agent, servant or employee thereof, shall keep or allow to be kept, either by itself, its agent, servant or employee, or any other person, any liquor in any place maintained or conducted by such public place or club, nor shall it permit the drinking of any liquor in any such place, unless the sale of liquor in said place is authorized by virtue of a valid and subsisting license issued by the Washington state liquor control board, or the consumption of liquor in said place is authorized by a special banquet permit issued by said board. Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

"Public place," for purposes of this section only, shall mean in addition to the definition set forth in *RCW 66.04.010(24), any place to which admission is charged or in which any pecuniary gain is realized by the owner or operator of such place in selling or vending food or soft drinks. [1969 ex.s. c 250 § 2; 1953 c 141 § 1 (adding a new section to chapter 66.24 RCW).]

***Reviser's note:** RCW 66.04.010 was amended by 1980 c 140 § 3, changing subsection (24) to subsection (23). RCW 66.04.010 was subsequently amended by 1997 c 321 § 37, changing subsection (23) to subsection (27).

66.24.495 Nonprofit arts organization license—Fee.

(1) There shall be a license to be designated as a nonprofit arts organization license. This shall be a special license to be issued to any nonprofit arts organization which sponsors and presents productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board. The license shall permit the licensee to sell liquor to patrons of productions or performances for consumption on the premises at these events. The fee for the license shall be two hundred fifty dollars per annum.

(2) For the purposes of this section, the term "nonprofit arts organization" means an organization which is organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (3) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The proceeds derived from sales of liquor, except for reasonable operating costs, must be used in furtherance of the purposes of the organization;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The liquor control board shall have access to its books in order to determine whether the corporation is entitled to a license.

(3) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. [1997 c 321 § 33; 1981 c 142 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.520 Grower's license—Fee. There shall be a grower's license to sell wine made from grapes or other agricultural products owned at the time of vinification by the licensee in bulk to holders of domestic wineries', distillers', or manufacturers' licenses or for export. The wine shall be made upon the premises of a domestic winery licensee and is referred to in this section as grower's wine. A grower's license authorizes the agricultural product grower to contract for the manufacturing of wine from the grower's own agricultural product, store wine in bulk made from agricultural products produced by the holder of this license, and to sell wine in bulk made from the grower's own agricultural products to a winery or distillery in the state of Washington or to export in bulk for sale out-of-state. The annual fee for a grower's license shall be seventy-five dollars. For the purpose of chapter 66.28 RCW, a grower licensee shall be deemed a manufacturer. [1986 c 214 § 1.]

66.24.530 Duty free exporter's license—Class S—Fee. (1) There shall be a license to be designated as a class S license to qualified duty free exporters authorizing such exporters to sell beer and wine to vessels for consumption outside the state of Washington.

(2) To qualify for a license under subsection (1) of this section, the exporter shall have:

(a) An importer's basic permit issued by the United States bureau of alcohol, tobacco, and firearms and a customs house license in conjunction with a common carriers bond;

(b) A customs bonded warehouse, or be able to operate from a foreign trade zone; and

(c) A notarized signed statement from the purchaser stating that the product is for consumption outside the state of Washington.

(3) The license for qualified duty free exporters shall authorize the duty free exporter to purchase from a brewery,

winery, beer wholesaler, wine wholesaler, beer importer, or wine importer licensed by the state of Washington.

(4) Beer and/or wine sold and delivered in this state to duty free exporters for use under this section shall be considered exported from the state.

(5) The fee for this license shall be one hundred dollars per annum. [1987 c 386 § 1.]

66.24.540 Motel license—Fee. There shall be a retailer's license to be designated as a motel license. The motel license may be issued to a motel that holds no other class of license under this title. No license may be issued to a motel offering rooms to its guests on an hourly basis. The license authorizes the licensee to sell, at retail, in locked honor bars, spirits in individual bottles not to exceed fifty milliliters, beer in individual cans or bottles not to exceed twelve ounces, and wine in individual bottles not to exceed one hundred eighty-seven milliliters, to registered guests of the motel for consumption in guest rooms. Each honor bar must also contain snack foods. No more than one-half of the guest rooms may have honor bars. The board shall charge a reasonable fee for this license. All spirits to be sold under the license must be purchased from the board. The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar. "Motel" as used in this section means a facility or place offering three or more self-contained units designated by number, letter, or some other method of identification to travelers and transient guests. As used in this section, "spirits," "beer," and "wine" have the meanings defined in RCW 66.04.010. [1997 c 321 § 34; 1993 c 511 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.550 Beer and wine gift delivery license—Fee—Limitations. There shall be a beer and wine retailer's license to be designated as a beer and wine gift delivery license to solicit, take orders for, sell, and deliver beer and/or wine in bottles and original packages to persons other than the person placing the order. A beer and wine gift delivery license may be issued only to a business solely engaged in the sale or sale and delivery of gifts at retail which holds no other class of license under this title or to a person in the business of selling flowers or floral arrangements at retail. No minimum beer and/or wine inventory requirement shall apply to holders of beer and wine gift delivery licenses. The fee for this license is seventy-five dollars per year. Delivery of beer and/or wine under a beer and wine gift delivery license shall be made in accordance with all applicable provisions of this title and the rules of the board, and no beer and/or wine so delivered shall be opened on any premises licensed under this title. A beer and wine gift delivery license does not authorize door-to-door solicitation of gift wine delivery orders. Deliveries of beer and/or wine under a beer and wine gift delivery license shall be made only in conjunction with gifts or flowers. [1997 c 321 § 35; 1989 c 149 § 1; 1986 c 40 § 1; 1982 c 85 § 10.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.570 Sports/entertainment facility license—Fee—Caterer's endorsement. (1) There is a license for sports entertainment facilities to be designated as a sports/entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under the endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived. [1997 c 321 § 36; 1996 c 218 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.580 Public house license—Holding other licenses—License as *class H restaurant—Fees—Taxes—Limitations. (1) A public house license allows the licensee:

(a) To annually manufacture no less than two hundred fifty gallons and no more than two thousand four hundred barrels of beer on the licensed premises;

(b) To sell product, that is produced on the licensed premises, at retail on the licensed premises for consumption on the licensed premises;

(c) To sell beer or wine not of its own manufacture for consumption on the licensed premises if the beer or wine has been purchased from a licensed beer or wine wholesaler;

(d) To hold other classes of retail licenses at other locations without being considered in violation of RCW 66.28.010;

(e) To apply for and, if qualified and upon the payment of the appropriate fee, be licensed as a *class H restaurant to do business at the same location. This fee is in addition to the fee charged for the basic public house license.

(2) While the holder of a public house license is not to be considered in violation of the prohibitions of ownership or interest in a retail license in RCW 66.28.010, the remainder of RCW 66.28.010 applies to such licensees.

(3) A public house licensee must pay all applicable taxes on production as are required by law, and all appropriate taxes must be paid for any product sold at retail on the licensed premises.

(4) The employees of the licensee must comply with the provisions of mandatory server training in RCW 66.20.300 through 66.20.350.

(5) The holder of a public house license may not hold a wholesaler's or importer's license, act as the agent of another manufacturer, wholesaler, or importer, or hold a brewery or winery license.

(6) The annual license fee for a public house is one thousand dollars.

(7) The holder of a public house license may hold other licenses at other locations if the locations are approved by the board.

(8) Existing holders of annual retail liquor licenses may apply for and, if qualified, be granted a public house license at one or more of their existing liquor licensed locations without discontinuing business during the application or construction stages. [1996 c 224 § 2.]

***Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31, effective July 1, 1998. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5.

Intent—1996 c 224: "It is the intent of the legislature that holders of annual on-premises retail liquor licenses be allowed to operate manufacturing facilities on those premises. This privilege is viewed as a means of enhancing and meeting the needs of the licensees' patrons without being in violation of the tied-house statute prohibitions of RCW 66.28.010. Furthermore, it is the intention of the legislature that this type of business not be viewed as primarily a manufacturing facility. Rather, the public house licensee shall be viewed as an annual retail licensee who is making malt liquor for on-premises consumption by the patrons of the licensed premises." [1996 c 224 § 1.]

Chapter 66.28

MISCELLANEOUS REGULATORY PROVISIONS

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Labels, unlawful refilling, etc., of trademarked containers: Chapter 19.76 RCW.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.28.010 Manufacturers, importers, and distributors barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions.

(1)(a) No manufacturer, importer, or distributor, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, or distributor own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, or distributor has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the

primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or distributor shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or distributor as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. No manufacturer, importer, or distributor shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or distributor sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned by the licensed domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays

and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer. [1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46. Prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.]

Reviser's note: This section was amended by 1998 c 126 § 11 and by 1998 c 127 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1998 c 127: "This act takes effect July 1, 1998." [1998 c 127 § 2.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Intent—1996 c 224: See note following RCW 66.24.580.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.28.030 Responsibility of brewer, domestic brewers and microbrewer, vintner, manufacturer holding certificate approval and importer for conduct of

distributor—Penalties. Every licensed brewer, domestic brewer and microbrewer, domestic winery, manufacturer holding a certificate of approval, licensed wine importer, and licensed beer importer shall be responsible for the conduct of any licensed beer or wine distributor in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such brewer, domestic brewer and microbrewer, domestic winery, manufacturer holding a certificate of approval, or imported by such beer or wine importer. Where the board finds that any licensed beer or wine distributor has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such distributor, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such distributor for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such beer or wine actually participated in such violation. [1997 c 321 § 47; 1975 1st ex.s. c 173 § 8; 1969 ex.s. c 21 § 6; 1939 c 172 § 8 (adding new section 27-D to 1933 ex.s. c 62); RRS § 7306-27D.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.040 Giving away of liquor prohibited—

Exceptions. Except as permitted by the board under RCW 66.20.010, no brewery, distributor, distiller, winery, importer, rectifier, or other manufacturer of liquor shall, within the state, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a brewery, distributor, winery, distiller, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a brewery, winery, distillery, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150 and 66.28.155; nothing in this section shall prevent a winery or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery from furnishing wine without charge or a domestic brewery from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, to a nonprofit charitable corporation or associa-

tion exempt from taxation under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a brewer from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises. [1998 c 256 § 1; 1998 c 126 § 12; 1997 c 39 § 1; 1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

Reviser's note: This section was amended by 1998 c 126 § 12 and by 1998 c 256 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1998 c 126: See note following RCW 66.20.010.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.042 Providing food and beverages for business meetings permitted. A liquor manufacturer, importer, or wholesaler may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section. [1990 c 125 § 1.]

66.28.043 Providing food, beverages, transportation, and admission to events permitted. A liquor manufacturer, importer, or wholesaler may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, wholesaler, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, or wholesaler may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section. [1990 c 125 § 2.]

66.28.045 Furnishing samples to board—Standards for accountability—Regulations. The legislature finds the furnishing of samples of liquor to the state liquor control board is an integral and essential part of the operation of the state liquor business. The legislature further finds that it is

necessary to establish adequate standards for the accountability of the receipt, use and disposition of liquor samples. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. [1975 1st ex.s. c 173 § 9.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.28.050 Solicitation of orders prohibited. No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as representative for the purchase or sale of liquor except as authorized by RCW 66.24.310 or by RCW 66.24.550. [1997 c 321 § 49; 1982 c 85 § 11; 1975-'76 2nd ex.s. c 74 § 2; 1969 ex.s. c 21 § 8; 1937 c 217 § 4; 1933 ex.s. c 62 § 42; RRS § 7306-42.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Effective date—1969 ex.s. c 21: See note following RCW 64.04.010.

66.28.060 Distillers to make monthly report—No sale except to board. Every distillery licensed under this title shall make monthly reports to the board pursuant to the regulations. No such distillery shall make any sale of spirits within the state of Washington except to the board. [1933 ex.s. c 62 § 26; RRS § 7306-26.]

66.28.070 Restrictions on purchases of beer or wine by retail licensee, brewer, winery, wholesaler, special occasion licensees. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any retail beer or wine licensee to purchase beer or wine, except from a duly licensed wholesaler or the board, and it shall be unlawful for any brewer, winery, or beer or wine wholesaler to purchase beer or wine, except from a duly licensed beer or wine wholesaler or importer.

(2) A beer or wine retailer licensee may purchase beer or wine from a government agency which has lawfully seized beer or wine from a licensed beer or wine retailer, or from a board-authorized retailer, or from a licensed retailer which has discontinued business if the wholesaler has refused to accept beer or wine from that retailer for return and refund. Beer and wine purchased under this subsection shall meet the quality standards set by its manufacturer.

(3) Special occasion licensees holding either a *class G or J license may only purchase beer or wine from a beer or wine retailer duly licensed to sell beer or wine for off-premises consumption, the board, or from a duly licensed beer or wine wholesaler. [1994 c 201 § 5; 1994 c 63 § 2; 1987 c 205 § 1; 1937 c 217 § 1(23H) (adding new section 23-H to 1933 ex.s. c 62); RRS § 7306-23H.]

Reviser's note: *(1) "Class G licenses" were redesignated as "special occasion licenses" by 1997 c 321 § 24, effective July 1, 1998. RCW 66.24.500, governing class J licenses, was repealed by 1997 c 321 § 63, effective July 1, 1998. "Class J licenses" were replaced by "special occasion licenses" under RCW 66.24.380.

(2) This section was amended by 1994 c 63 § 2 and by 1994 c 201 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

66.28.080 Permit for music and dancing upon licensed premises. It shall be unlawful for any person, firm or corporation holding any retailer's license to permit or allow upon the premises licensed any music, dancing, or entertainment whatsoever, unless and until permission thereto is specifically granted by appropriate license or permit of the proper authorities of the city or town in which such licensed premises are situated, or the board of county commissioners, if the same be situated outside an incorporated city or town: PROVIDED, That the words "music and entertainment," as herein used, shall not apply to radios or mechanical musical devices. [1969 ex.s. c 178 § 8; 1949 c 5 § 7; 1937 c 217 § 3 (adding new section 27-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-27A.]

Severability—1949 c 5: See RCW 66.98.080.

66.28.090 Licensed premises or banquet permit premises open to inspection—Failure to allow, violation.

(1) All licensed premises used in the manufacture, storage, or sale of liquor, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, and/or any premises where a banquet permit has been granted, shall at all times be open to inspection by any liquor enforcement officer, inspector or peace officer.

(2) Every person, being on any such premises and having charge thereof, who refuses or fails to admit a liquor enforcement officer, inspector or peace officer demanding to enter therein in pursuance of this section in the execution of his/her duty, or who obstructs or attempts to obstruct the entry of such liquor enforcement officer, inspector or officer of the peace, or who refuses to allow a liquor enforcement officer, and/or an inspector to examine the books of the licensee, or who refuses or neglects to make any return required by this title or the regulations, shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 20; 1935 c 174 § 7; 1933 ex.s. c 62 § 52; RRS § 7306-52.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.28.100 Spirits to be labeled—Contents. Every person manufacturing spirits as defined in this title shall put upon all packages containing spirits so manufactured a distinctive label, showing the nature of the contents, the name of the person by whom the spirits were manufactured, the place where the spirits were manufactured, and showing the alcoholic content of such spirits. For the purpose of this section the contents of packages containing spirits shall be shown by the use of the words "whiskey", "rum", "brandy", and the like, on the outside of such packages. [1933 ex.s. c 62 § 46; RRS § 7306-46.]

66.28.110 Wine to be labeled—Contents. Every person producing, manufacturing, bottling or distributing wine shall put upon all packages a distinctive label such as will provide the consumer with adequate information as to the identity and quality of the product, the alcoholic content thereof, the net contents of the package, the name of the producer, manufacturer or bottler thereof and such other information as the board may by regulation prescribe. [1939 c 172 § 4; 1933 ex.s. c 62 § 45; RRS § 7306-45.]

66.28.120 Malt liquor to be labeled—Contents. Every person manufacturing or distributing malt liquor for sale within the state shall put upon all packages containing malt liquor so manufactured or distributed a distinctive label showing the nature of the contents, the name of the person by whom the malt liquor was manufactured, and the place where it was manufactured. For the purpose of this section, the contents of packages containing malt liquor shall be shown by the use of the word "beer," "ale," "malt liquor," "lager," "stout," or "porter," on the outside of the packages. [1997 c 100 § 1; 1982 c 39 § 2; 1961 c 36 § 1; 1933 ex.s. c 62 § 44; RRS § 7306-44.]

Severability—1982 c 39: See note following RCW 66.04.010.

66.28.130 Selling or serving of liquor to or consumption by standing or walking person. It shall not be unlawful for a retail licensee whose premises are open to the general public to sell, supply or serve liquor to a person for consumption on the licensed retail premises if said person is standing or walking, nor shall it be unlawful for such licensee to permit any said person so standing or walking to consume liquor on such premises: PROVIDED HOWEVER, That the retail licensee of such a premises may at his discretion, promulgate a house rule that no person shall be served nor allowed to consume liquor unless said person is seated. [1969 ex.s. c 112 § 2.]

66.28.140 Removing family beer or wine from home for exhibition or use at wine tastings or competitions—Conditions. (1) An adult member of a household may remove family beer or wine from the home for exhibition or use at organized beer or wine tastings or competitions, subject to the following conditions:

(a) The quantity removed by a producer for these purposes is limited to a quantity not exceeding one gallon;

(b) Family beer or wine is not removed for sale or for the use of any person other than the producer. This subparagraph does not preclude any necessary tasting of the beer or wine when the exhibition or beer or wine tasting includes judging the merits of the wine by judges who have been selected by the organization sponsoring the affair; and

(c) When the display contest or judging purpose has been served, any remaining portion of the sample is returned to the family premises from which removed.

(2) As used in this section, "family beer or wine" means beer or wine manufactured in the home for consumption therein, and not for sale. [1994 c 201 § 6; 1981 c 255 § 2.]

66.28.150 Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct courses of instruction on beer and wine. A brewery, winery, distillery, wholesaler, or its licensed agent may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of beer, wine, or spirituous liquor, including but not limited to, the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, or spirituous liquor. The brewery, winery, distillery, wholesaler, or its licensed agent may furnish beer, wine, or spirituous liquor and such other equipment, materials, and

utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the brewery, winery, distillery, or wholesaler, at the premises of a retail licensee, or elsewhere. [1997 c 39 § 2; 1982 1st ex.s. c 26 § 1.]

66.28.155 Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct educational activities on licensed premises of retailer. A brewery, winery, distillery, wholesaler, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a brewery, winery, distillery, wholesaler, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, or distillery and wholesaler appearances in an effort to equitably represent the industries. Nothing in this section permits a brewery, winery, distillery, wholesaler, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW 66.28.010. [1997 c 39 § 3; 1984 c 196 § 1.]

66.28.160 Promotion of liquor at colleges and universities. No liquor manufacturer, importer, wholesaler, retailer, agent thereof, or campus representative of any of the foregoing, may conduct promotional activities for any liquor product on the campus of any college or university nor may any such entities engage in activities that facilitate or promote the consumption of alcoholic beverages by the students of the college or university at which the activity takes place. This section does not prohibit the following:

- (1) The sale of alcoholic beverages, by retail licensees on their licensed premises, to persons of legal age and condition to consume alcoholic beverages;
- (2) Sponsorship of broadcasting services for events on a college or university campus;
- (3) Liquor advertising in campus publications; or
- (4) Financial assistance to an activity and acknowledgment of the source of the assistance, if the assistance, activity, and acknowledgment are each approved by the college or university administration. [1985 c 352 § 20.]

Severability—1985 c 352: See note following RCW 10.05.010.

66.28.170 Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited. It is unlawful for a manufacturer of wine or malt beverages holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a brewery license, or a domestic winery license to discriminate in price in selling to any

purchaser for resale in the state. [1997 c 321 § 50; 1985 c 226 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer distributor's license, a domestic brewer's license, a microbrewer's license, a beer importer's license, a beer distributor's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and distributors.

(2) Beer and wine distributor price posting.

(a) Every beer or wine distributor shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine distributor;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine distributor and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Distributor prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) All price postings filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

(h) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's posted prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every brewery and winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain a schedule of prices charged to distributors for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine distributors who sell to other beer and/or wine distributors.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a brewery or winery shall be uniform prices to all distributors on a state-wide basis less bona fide allowances for freight differentials. Quantity discounts are

prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine distributor, or to a beer or wine distributor who sells beer or wine to another beer or wine distributor. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No brewery, winery, certificate of approval holder, beer or wine importer, or beer or wine distributor may sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No brewery or winery may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the brewery or winery and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) All prices, contracts, and memoranda filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential. [1997 c 321 § 51; 1995 c 232 § 10; 1985 c 226 § 4.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.190 Sales of nonliquor food products. RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food products on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food products to ensure that such persons are in compliance with RCW 66.28.010.

For the purpose of this section, "nonliquor food products" includes all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987,

except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products. [1997 c 321 § 52; 1988 c 50 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller. Licensees holding a beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240. Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(1) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(2) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(3) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(a) The purchaser is of legal age to purchase, possess, or use malt liquor;

(b) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(c) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(4) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(5) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control. [1998 c 126 § 13; 1997 c 321 § 38; 1993 c 21 § 2; 1989 c 271 § 229.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective dates—1989 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

(1) Sections 502 and 504 of this act shall take effect June 1, 1989; and
(2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989." [1989 c 271 § 607.]

Severability—1989 c 271: See note following RCW 9.94A.310.

66.28.210 Keg registration—Requirements of purchaser. Any person who purchases the contents of kegs

or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

(1) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(2) Provide one piece of identification pursuant to RCW 66.16.040;

(3) Be of legal age to purchase, possess, or use malt liquor;

(4) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;

(5) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;

(6) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any place other than that particular address declared on the receipt and declaration; and

(7) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control. [1989 c 271 § 230.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

66.28.220 Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful. The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a state-wide basis or on the basis of smaller geographical areas.

The board shall develop and make available forms for the declaration and receipt required by RCW 66.28.200. The board may charge class E licensees for the costs of providing the forms and that money collected for the forms shall be deposited into the liquor revolving fund for use by the board, without further appropriation, to continue to administer the cost of the keg registration program.

It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board. [1993 c 21 § 3; 1989 c 271 § 231.]

***Reviser's note:** "Class E licenses" were redesignated as "grocery store licenses" by 1997 c 321 § 22, effective July 1, 1998.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

66.28.230 Keg registration—Penalties. (1) Except as provided in subsection (2) of this section, the violation of any provisions of RCW 66.28.200 through 66.28.220 is punishable by a fine of not more than five hundred dollars.

(2) Except as provided in RCW 66.44.270, a person who intentionally furnishes a keg or other container containing four or more gallons of malt liquor to a minor is liable,

on conviction, for a first offense for a penalty of not more than five hundred dollars, or for imprisonment for not more than two months, or both; for a second offense for a penalty of not more than five hundred dollars or imprisonment for not more than six months, or both; and for a third or subsequent offense for a penalty of not more than five hundred dollars or imprisonment for more than one year, or both. [1989 c 271 § 232.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

66.28.240 Keg registration—State preemption. The state of Washington fully occupies and preempts the entire field of keg registration. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to keg registration that are consistent with this chapter. Such local ordinances shall have the same or lesser penalties as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 233.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

Chapter 66.32

SEARCH AND SEIZURE

Sections

66.32.010	Possession of contraband liquor.
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66.32.090	Seized liquor to be reported to board.

66.32.010 Possession of contraband liquor. Except as permitted by the board, no liquor shall be kept or had by any person within this state unless the package in which the liquor was contained had, while containing that liquor, been sealed with the official seal adopted by the board, except in the case of:

- (1) Liquor imported by the board; or
- (2) Liquor manufactured in the state for sale to the board or for export; or
- (3) Beer, purchased in accordance with the provisions of law; or
- (4) Wine or beer exempted in RCW 66.12.010. [1955 c 39 § 3. Prior: 1943 c 216 § 3(1); 1933 ex.s. c 62 § 33(1); Rem. Supp. 1943 § 7306-33(1).]

66.32.020 Search warrant—Search and seizure. If, upon the sworn complaint of any person, it is made to appear to any judge of the superior court or district court, that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished, or otherwise disposed of or kept in viola-

tion of the provisions of this title, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to a civil officer of the state duly authorized to enforce or assist in enforcing any law thereof, or to an inspector of the board, commanding the civil officer or inspector to search the premises, room, house, building, boat, vehicle, structure or place designated and described in the complaint and warrant, and to seize all intoxicating liquor there found, together with the vessels in which it is contained, and all implements, furniture, and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of the liquor, and to safely keep the same, and to make a return of the warrant within ten days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession they were found, if any, and if no person is found in the possession of the articles, the return shall so state. [1987 c 202 § 220; 1955 c 288 § 1; 1955 c 39 § 4. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

Intent—1987 c 202: See note following RCW 2.04.190.

66.32.030 Service of warrant—Receipt for seized property. A copy of the warrant, together with a detailed receipt for the property taken shall be served upon the person found in possession of any intoxicating liquor, furniture, or fixtures so seized, and if no person is found in possession thereof, a copy of the warrant and receipt shall be left in a conspicuous place upon the premises wherein they are found. [1955 c 39 § 5. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

66.32.040 Forfeiture of liquor directed if kept unlawfully. All liquor seized pursuant to the authority of a search warrant or an arrest shall, upon adjudication that it was kept in violation of this title, be forfeited and upon forfeiture be disposed of by the agency seizing the liquor. [1993 c 26 § 1; 1955 c 39 § 6. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 23(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

66.32.050 Hearing. Upon the return of the warrant as provided herein, the judge shall fix a time, not less than ten days, and not more than thirty days thereafter, for the hearing of the return, when he or she shall proceed to hear and determine whether or not the articles seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of this title. [1987 c 202 § 221; 1955 c 39 § 7. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

Intent—1987 c 202: See note following RCW 2.04.190.

66.32.060 Claimants may appear. At the hearing, any person claiming any interest in any of the articles seized may appear and be heard upon filing a written claim setting forth particularly the character and extent of his interest, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest in the articles

claimed, and that they were not used in violation of any of the provisions of this title, and were not in any manner kept or possessed with the intention of violating any of its provisions. [1955 c 39 § 8. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.070 Judgment of forfeiture—Disposition of proceeds of property sold. If, upon the hearing, the evidence warrants, or, if no person appears as claimant, the judge shall thereupon enter a judgment of forfeiture, and order such articles destroyed forthwith: PROVIDED, That if, in the opinion of the judge, any of the forfeited articles other than intoxicating liquors are of value and adapted to any lawful use, the judge shall, as a part of the order and judgment, direct that the articles other than intoxicating liquor be sold as upon execution by the officer having them in custody, and the proceeds of the sale after payment of all costs of the proceedings shall be paid into the liquor revolving fund. [1987 c 202 § 222; 1955 c 39 § 9. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

Intent—1987 c 202: See note following RCW 2.04.190.

66.32.080 Forfeiture action no bar to criminal prosecution. Action under RCW 66.32.010 through 66.32.080 and the forfeiture, destruction, or sale of any articles thereunder shall not bar prosecution under any other provision. [1955 c 39 § 10. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.090 Seized liquor to be reported to board. In every case in which liquor is seized by a sheriff or deputy of any county or by a police officer of any municipality or by a member of the Washington state patrol, or any other authorized peace officer or inspector, it shall be the duty of the sheriff or deputy of any county, or chief of police of the municipality, or the chief of the Washington state patrol, as the case may be, to forthwith report in writing to the board of particulars of such seizure. [1993 c 26 § 2; 1987 c 202 § 223; 1935 c 174 § 8; 1933 ex.s. c 62 § 55; RRS § 7306-55.]

Intent—1987 c 202: See note following RCW 2.04.190.

provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such a place, are hereby declared to be a common nuisance. The prosecuting attorney of the county in which such nuisance is situated shall institute and maintain an action in the superior court of such county in the name of the state of Washington to abate and perpetually enjoin such nuisance. The plaintiff shall not be required to give bond in such action, and restraining orders, temporary injunctions and permanent injunctions may be granted in said cause as in other injunction proceedings, and upon final judgment against the defendant, such court may also order that said room, house, building, boat, vehicle, structure or place, shall be closed for a period of one year; or until the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal sum of not less than one thousand dollars payable to the state of Washington, and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon or therein in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and that he will pay all fines, costs and damages assessed against him for any violation of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. If any condition of such bond be violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

In all cases where any person has been convicted of a violation of this title or the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor an action may be brought in the superior court of the county in which the premises are situated, to abate as a nuisance any real estate or other property involved in the commission of said offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, building, boat, vehicle, structure or place against which such action is brought is a public nuisance. [1939 c 172 § 9 (adding new section 33-A to 1933 ex.s. c 62); RRS § 7306-33A. Formerly RCW 66.36.010 through 66.36.040.]

Chapter 66.36

ABATEMENT PROCEEDINGS

Sections

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen. Any room, house, building, boat, vehicle, structure or place, except premises licensed under this title, where liquor, as defined in this title, is manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the

Chapter 66.40

LOCAL OPTION

Sections

66.40.010 Local option units.
66.40.020 Election may be held.
66.40.030 Class H license election.
66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection.
66.40.100 Check of petitions.
66.40.110 Form of ballot.
66.40.120 Canvass of votes—Effect.
66.40.130 Effect of election as to class H licenses.
66.40.140 Certificate of result to board—Grace period—Permitted activities.
66.40.150 Concurrent liquor elections in same election unit prohibited.

66.40.010 Local option units. For the purpose of an election upon the question of whether the sale of liquors shall be permitted, the election unit shall be any incorporated city or town, or all that portion of any county not included within the limits of incorporated cities and towns. [1957 c 263 § 3. Prior: (i) 1933 ex.s. c 62 § 82; RRS § 7306-82. (ii) 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.020 Election may be held. Within any unit referred to in RCW 66.40.010, upon compliance with the conditions hereinafter prescribed, there may be held, at the time and as a part of any general election, an election upon the question of whether the sale of liquor shall be permitted within such unit; and in the event that any such election is held in any such unit, no other election under this section shall be held prior to the next succeeding general election. [1933 ex.s. c 62 § 83; RRS § 7306-83.]

66.40.030 *Class H license election. Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under *class H licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under *class H licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises within the election unit licensed under *class H licenses. The addition after an election under this section of new territory to a city, town, or county, by annexation, disincorporation, or otherwise, shall not extend the prohibition against the sale of liquor under *class H licenses to the new territory. Elections held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under *class H licenses shall be permitted within such election unit. [1994 c 55 § 1; 1949 c 5 § 12 (adding new section 83-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-83A.]

***Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31, effective July 1, 1998. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5

Severability—1949 c 5: See RCW 66.98.080.

66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection. Any unit referred to in RCW 66.40.010 may hold such election upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit, upon the filing with the county auditor of the county within which such unit is located, of a petition subscribed by qualified electors of the unit equal in number to at least

thirty percent of the electors voting at the last general election within such unit. Such petition shall designate the unit in which the election is desired to be had, the date upon which the election is desired to be held, and the question that is desired to be submitted. The persons signing such a petition shall state their post office address, the name or number of the precinct in which they reside, and in case the subscriber be a resident of a city, the street and house number, if any, of his residence, and the date of signature. Said petition shall be filed not less than sixty days nor more than ninety days prior to the date upon which the election is to be held. No signature shall be valid unless the above requirements are complied with, and unless the date of signing the same is less than ninety days preceding the date of filing. No signature shall be withdrawn after the filing of such petition. Such petition may consist of one or more sheets and shall be fastened together as one document, filed as a whole, and when filed shall not be withdrawn or added to. Such petition shall be a public document and shall be subject to the inspection of the public. Upon the request of anyone filing such a petition and paying, or tendering to the county auditor one dollar for each hundred names, or fraction thereof, signed thereto, together with a copy thereof, said county auditor shall immediately compare the original and copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the date when such original was filed in his office; and said officer shall furnish, upon the demand of any person, a copy of said petition, upon payment of the same fee required for the filing of original petitions. [1933 ex.s. c 62 § 84; RRS § 7306-84. Formerly RCW 66.40.040 through 66.40.090.]

66.40.100 Check of petitions. Upon the filing of a petition as hereinbefore provided, the county auditor with whom it is filed shall cause the names on said petition to be compared with the names on the voters' official registration records provided for by law with respect to such unit. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by such registration records to be legal voters and shall certify that the signatures so initialed are the signatures of legal voters of the state of Washington and of said unit, and shall sign such certificate. In the event that said petition, after such comparison, shall be found to have been signed by the percentage of legal voters of said unit referred to in RCW 66.40.040, the question shall be placed upon the ballot at the next general election. [1933 ex.s. c 62 § 85; RRS § 7306-85.]

66.40.110 Form of ballot. Upon the ballot to be used at such general election the question shall be submitted in the following form:

"Shall the sale of liquor be permitted within (here specify the unit in which election is to be held)."
Immediately below said question shall be placed the alternative answers, as follows:
"For sale of liquor ()
Against sale of liquor ()."

Each person desiring to vote in favor of permitting the sale of liquor within the unit in which the election is to be held shall designate his choice beside the words "For sale of liquor", and those desiring to vote against the permitting of the sale of liquor within such unit shall designate their choice beside the words "Against sale of liquor", and the ballot shall be counted accordingly. [1933 ex.s. c 62 § 86; RRS § 7306-86.]

66.40.120 Canvass of votes—Effect. The returns of any such election shall be canvassed in the manner provided by law. If the majority of qualified electors voting upon said question at said election shall have voted "For sale of liquor" within the unit in which the election is held, the sale of liquor may be continued in accordance with the provisions of this title. If the majority of the qualified electors voting on such question at any such election shall vote "Against sale of liquor", then, within thirty days after such canvass no sale or purchase of liquor, save as herein provided, shall be made within such unit until such permission so to do be subsequently granted at an election held for that purpose under the provisions of this title. [1933 ex.s. c 62 § 87; RRS § 7306-87.]

66.40.130 Effect of election as to *class H licenses. Ninety days after December 2, 1948, *class H licenses may be issued in any election unit in which the sale of liquor is then lawful. No *class H license shall be issued in any election unit in which the sale of liquor is forbidden as the result of an election held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, unless a majority of the qualified electors in such election unit voting upon this initiative at the general election in November, 1948, vote in favor of this initiative, or unless at a subsequent general election in which the question of whether the sale of liquor under *class H licenses shall be permitted within such unit is submitted to the electorate, as provided in RCW 66.40.030, a majority of the qualified electors voting upon such question vote "for the sale of liquor under *class H licenses." [1949 c 5 § 13 (adding new section 87-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-87A.]

***Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31, effective July 1, 1998. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5.

Severability—1949 c 5: See RCW 66.98.080.

66.40.140 Certificate of result to board—Grace period—Permitted activities. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "Against sale of liquor", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and thereafter, except as hereinafter provided, it shall not be lawful for a liquor store to be operated therein nor for licensees to maintain and operate licensed premises therein except as hereinafter provided:

(1) As to any stores maintained by the board within any such unit at the time of such licensing, the board shall have

a period of thirty days from and after the date of the canvass of the vote upon such election to continue operation of its store or stores therein.

(2) As to any premises licensed hereunder within any such unit at the time of such election, such licensee shall have a period of sixty days from and after the date of the canvass of the vote upon such election in which to discontinue operation of its store or stores therein.

(3) Nothing herein contained shall prevent any distillery, brewery, rectifying plant or winery or the licensed operators thereof from selling its manufactured product, manufactured within such unit, outside the boundaries thereof.

(4) Nothing herein contained shall prevent any person residing in any unit in which the sale of liquor shall have been forbidden by popular vote as herein provided, who is otherwise qualified to receive and hold a permit under this title, from lawfully purchasing without the unit and transporting into or receiving within the unit, liquor lawfully purchased by him outside the boundaries of such unit. [1933 ex.s. c 62 § 88; RRS § 7306-88.]

66.40.150 Concurrent liquor elections in same election unit prohibited. No election in any unit referred to in RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit shall be held at the same time as an election is held in the same unit upon the question of whether the sale of liquor under the provisions of RCW 66.40.030 shall be permitted. In the event valid and sufficient petitions are filed which would otherwise place both questions on the same ballot that question upon which the petition was filed with the county auditor first shall be placed on the ballot to the exclusion of the other. [1949 c 93 § 1 (adding new section 88-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-88A.]

Chapter 66.44

ENFORCEMENT—PENALTIES

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66.44.010	Local officers to enforce law—Authority of board—Liquor enforcement officers.
66.44.040	Sufficiency of description of offenses in complaints, informations, process, etc.
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66.44.090	Acting without license.
66.44.100	Opening or consuming liquor in public place—Penalty.
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- 66.44.200 Sales to persons apparently under the influence of liquor—Purchases or consumption by persons apparently under the influence of liquor on licensed premises—Penalty—Notice—Separation of actions.
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- 66.44.280 Minor applying for permit.
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- 66.44.291 Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive.
- 66.44.292 Sales to minors by licensee or employec—Board notification to prosecuting attorney to formulate charges against minors.
- 66.44.300 Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold.
- 66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees.
- 66.44.316 Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment.
- 66.44.318 Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine.
- 66.44.320 Sales of liquor to minors a violation.
- 66.44.325 Unlawful transfer to a minor of an identification of age.
- 66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.
- 66.44.330 Prosecutions to be reported by prosecuting attorney and police court.
- 66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for class E and/or F licensed employers.
- 66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for class A, C, D and/or H licensed employers.
- 66.44.365 Juvenile driving privileges—Alcohol or drug violations.
- 66.44.370 Resisting or opposing officers in enforcement of title.
- 66.44.800 Compliance by Washington wine commission.

Minors

access to tobacco, role of liquor control board: Chapter 70.155 RCW. prohibited to enter bars or taverns: RCW 26.28.080.

Sale or gift of tobacco to persons under certain age is gross misdemeanor: RCW 26.28.080.

State institutions, bringing in liquor prohibited: RCW 72.23.300.

66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers. (1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because

of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

(3) In addition to the other duties under this section, the board shall enforce chapters 82.24 and 82.26 RCW.

(4) The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. They shall have the power to arrest without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. [1998 c 18 § 1; 1987 c 202 § 224; 1969 ex.s. c 199 § 28; 1939 c 172 § 5; 1935 c 174 § 11; 1933 ex.s. c 62 § 70; RRS § 7306-70. Formerly RCW 66.44.010 through 66.44.030.]

Intent—1987 c 202: See note following RCW 2.04.190.

66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc. In describing the offense respecting the sale, or keeping for sale or other disposal, of liquor, or the having, keeping, giving, purchasing or consumption of liquor in any information, summons, conviction, warrant, or proceeding under this title, it shall be sufficient to simply state the sale, or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, without stating the name or kind of such liquor or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. [1933 ex.s. c 62 § 57; RRS § 7306-57.]

66.44.050 Description of offense in words of statutes—Proof required. The description of any offense under this title, in the words of this title, or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this title, may be proved by the defendant, but need not be specified or negatived in the information; but if it is so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the

informant or complainant. [1933 ex.s. c 62 § 58; RRS § 7306-58.]

66.44.060 Proof of unlawful sale establishes prima facie intent. In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this title. [1933 ex.s. c 62 § 59; RRS § 7306-59.]

66.44.070 Certified analysis is prima facie evidence of alcoholic content. A certificate, signed by any person appointed or designated by the board in writing as an analyst, as to the percentage of alcohol contained in any liquid, drink, liquor, or combination of liquors, when produced in any court or before any court shall be prima facie evidence of the percentage of alcohol contained therein. [1933 ex.s. c 62 § 60; RRS § 7306-60.]

66.44.080 Service of process on corporation. In all prosecutions, actions, or proceedings under the provisions of this title against a corporation, every summons, warrant, order, writ or other proceeding may be served on the corporation in the same manner as is now provided by law for service of civil process. [1933 ex.s. c 62 § 61; RRS § 7306-61.]

66.44.090 Acting without license. Any person doing any act required to be licensed under this title without having in force a license issued to him shall be guilty of a gross misdemeanor. [1955 c 289 § 2. Prior: (i) 1933 ex.s. c 62 § 28; RRS § 7306-28.(ii) 1939 c 172 § 6(1); 1935 c 174 § 6(1); 1933 ex.s. c 62 § 92(1); RRS § 7306-92(1).]

66.44.100 Opening or consuming liquor in public place—Penalty. Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a misdemeanor, and on conviction therefor shall be fined not more than one hundred dollars. [1981 1st ex.s. c 5 § 21; 1933 ex.s. c 62 § 34; RRS § 7306-34.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.120 Unlawful use of seal. No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a vendor or store employee; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

Every person who willfully violates any provision of this section shall be guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three

months nor more than six months, without the option of the payment of a fine; for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine; for a third offense or subsequent offenses to imprisonment in a state correctional facility for not less than one year nor more than two years. [1992 c 7 § 42; 1933 ex.s. c 62 § 47; RRS § 7306-47.]

66.44.130 Sales of liquor by drink or bottle. Except as otherwise provided in this title, every person who sells by the drink or bottle, any liquor shall be guilty of a violation of this title. [1955 c 289 § 3. Prior: 1939 c 172 § 6(2); 1935 c 174 § 15(2); 1933 ex.s. c 62 § 92(2); RRS § 7306-92(2).]

66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash. Every person who shall sell or offer for sale, or transport in any manner, any spirituous liquor, without government stamp or seal attached thereto, or who shall operate without a license, any still or other device for the production of spirituous liquor, or shall have in his possession or under his control any mash capable of being distilled into spirituous liquor except as provided in RCW 66.12.130, shall be guilty of a gross misdemeanor and upon conviction thereof shall upon his first conviction be fined not less than five hundred dollars and confined in the county jail not less than six months, and upon second and subsequent conviction shall be fined not less than one thousand dollars and confined in the county jail not less than one year. [1980 c 140 § 4; 1955 c 289 § 4. Prior: 1939 c 172 § 6(3); 1935 c 174 § 15(3); 1933 ex.s. c 62 § 92(3); RRS § 7306-92(3).]

66.44.150 Buying liquor illegally. If any person in this state buys alcoholic beverages from any person other than the board, a state liquor store, or some person authorized by the board to sell them, he shall be guilty of a misdemeanor. [1955 c 289 § 5. Prior: 1939 c 172 § 6(4); 1935 c 174 § 15(4); 1933 ex.s. c 62 § 92(4); RRS § 7306-92(4).]

66.44.160 Illegal possession, transportation of alcoholic beverages. Except as otherwise provided in this title, any person who has or keeps or transports alcoholic beverages other than those purchased from the board, a state liquor store, or some person authorized by the board to sell them, shall be guilty of a violation of this title. [1955 c 289 § 6. Prior: 1939 c 172 § 6(5); 1935 c 174 § 15(5); 1933 ex.s. c 62 § 92(5); RRS § 7306-92(5).]

66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is. Any person who keeps or possesses liquor upon his person or in any place, or on premises conducted or maintained by him as principal or agent with the intent to sell it contrary to provisions of this title, shall be guilty of a violation of this title. The possession of liquor by the principal or agent on premises conducted or maintained, under federal authority, as a retail dealer in liquors, shall be prima facie evidence of the intent to sell

liquor. [1955 c 289 § 7. Prior: 1937 c 144 § 1 (adding new section 92A to 1933 ex.s. c 62); RRS § 7306-92A.]

66.44.175 Violations of law. Every person who violates any provision of this title or the regulations shall be guilty of a violation of this title, whether otherwise declared or not. [1933 ex.s. c 62 § 91; RRS § 7306-91.]

66.44.180 General penalties—Jurisdiction for violations. Every person guilty of a violation of this title for which no penalty has been specifically provided shall be liable, on conviction, for a first offense to a penalty of not more than five hundred dollars, or to imprisonment for not more than two months, or both; for a second offense to imprisonment for not more than six months; and for a third or subsequent offense to imprisonment for not more than one year. If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor. [1987 c 202 § 225; 1981 1st ex.s. c 5 § 22; 1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306-93.]

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.190 Sales on university grounds prohibited—Exceptions. Except at the faculty center as so designated by the university board of regents to the Washington state liquor control board who may issue a *class H club license therefor, it shall be unlawful to sell any intoxicating liquors, with or without a license on the grounds of the University of Washington, otherwise known and described as follows: Fractional section 16, township 25 north, range 4 east of Willamette Meridian except to the extent allowed under banquet permits issued pursuant to RCW 66.24.481. [1997 c 321 § 62; 1979 ex.s. c 104 § 1; 1975 1st ex.s. c 68 § 1; 1967 c 21 § 1; 1951 c 120 § 1; 1933 ex.s. c 49 § 1; 1895 c 75 § 1; RRS § 5100.]

***Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5.

Effective date—1997 c 321: See note following RCW 66.24.010.

Application of Title 66 RCW to deleted territory: "All of the provisions of Title 66 RCW and the rules and regulations promulgated thereunder shall fully apply to the territory deleted from RCW 66.44.190 by section 1 of this 1967 amendatory act." [1967 c 21 § 2.]

66.44.200 Sales to persons apparently under the influence of liquor—Purchases or consumption by persons apparently under the influence of liquor on licensed premises—Penalty—Notice—Separation of actions. (1) No person shall sell any liquor to any person apparently under the influence of liquor.

(2)(a) No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.

(b) A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.

(c) A defendant's intoxication may not be used as a defense in an action under this subsection.

(d) Until July 1, 2000, every establishment licensed under RCW 66.24.330 or 66.24.420 shall conspicuously post in the establishment notice of the prohibition against the purchase or consumption of liquor under this subsection.

(3) An administrative action for violation of subsection (1) of this section and an infraction issued for violation of subsection (2) of this section arising out of the same incident are separate actions and the outcome of one shall not determine the outcome of the other. [1998 c 259 § 1; 1933 ex.s. c 62 § 36; RRS § 7306-36.]

66.44.210 Obtaining liquor for ineligible person. Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with the provisions of this title, no person shall procure or supply, or assist directly or indirectly in procuring or supplying, liquor for or to anyone whose permit is suspended or has been canceled. [1933 ex.s. c 62 § 38; RRS § 7306-38.]

66.44.240 Drinking in public conveyance—Penalty against carrier—Exception. Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who knowingly permits any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. This section does not apply to a public conveyance that is commercially chartered for group use or a for-hire vehicle licensed under city, county, or state law. [1983 c 165 § 29; 1909 c 249 § 442; RRS § 2694.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.

66.44.250 Drinking in public conveyance—Penalty against individual—Restricted application. Every person who drinks any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. With respect to a public conveyance that is commercially chartered for group use and with respect to a for-hire vehicle licensed under city, county, or state law, this section applies only to the driver of the vehicle. [1983 c 165 § 30; 1909 c 249 § 441; RRS § 2693.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.

66.44.265 Candidates giving or purchasing liquor on election day prohibited. It shall be unlawful for a candidate for office or for nomination thereto whose name

appears upon the ballot at any election to give to or purchase for another person, not a member of his or her family, any liquor in or upon any premises licensed by the state for the sale of any such liquor by the drink during the hours that the polls are open on the day of such election. [1971 ex.s. c 112 § 2.]

66.44.270 Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions. (1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(2)(a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(b) It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (2)(b) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (4) or (5) of this section.

(3) Subsections (1) and (2)(a) of this section do not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years. [1998 c 4 § 1; 1993 c 513 § 1; 1987 c 458 § 3; 1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1); prior: Code 1881 § 939; 1877 p 205 § 5.]

Severability—1987 c 458: See note following RCW 48.21.160.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.44.280 Minor applying for permit. Every person under the age of twenty-one years who makes application for a permit shall be guilty of an offense against this title. [1955 c 70 § 3. Prior: 1935 c 174 § 6(2); 1933 ex.s. c 62 § 37(2); RRS § 7306-37(2).]

66.44.290 Minor purchasing or attempting to purchase liquor. Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. [1965 c 49 § 1; 1955 c 70 § 4. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1).]

66.44.291 Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive. Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of RCW 66.44.290 is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service. [1987 c 101 § 1; 1965 c 49 § 2.]

66.44.292 Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors. The Washington state liquor control board shall furnish notification of any hearing or hearings held, wherein any licensee or his employee is found to have sold liquor to a minor, to the prosecuting attorney of the county in which the sale took place, upon which the prosecuting attorney may formulate charges against said minor or minors for such violation of RCW 66.44.290 as may appear. [1981 1st ex.s. c 5 § 23; 1965 c 49 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.300 Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold. Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for the adult; or holds out such minor to be twenty-one years of age or older to the owner or employee of the liquor establishment, a law enforcement officer, or a liquor enforcement officer shall be guilty of a misdemeanor. [1994 c 201 § 7; 1941 c 78 § 1; Rem. Supp. 1941 § 7306-37A.]

66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees. (1) Except as otherwise provided by RCW 66.44.316 and 66.44.350, it shall be a misdemeanor:

(a) To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain in any area classified as off-limits to such a

person, but persons under twenty-one years of age may pass through a restricted area in a facility holding a spirits, beer, and wine private club license;

(c) For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining in any area classified by the board as off-limits to such a person.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years of age. [1998 c 126 § 14; 1997 c 321 § 53; 1994 c 201 § 8; 1981 1st ex.s. c 5 § 24; 1943 c 245 § 1 (adding new section 36-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-36A. Formerly RCW 66.24.130 and 66.44.310.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.44.316 Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment. It is lawful for:

(1) Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians;

(2) Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services;

(3) Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices; and

(4) Security and law enforcement officers, and fire fighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any person under the age of twenty-one years. [1985 c 323 § 1; 1984 c 136 § 1; 1980 c 22 § 1; 1973 1st ex.s. c 96 § 1.]

66.44.318 Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine. Licensees holding nonretail class liquor licenses are permitted to allow their employees between [the] ages of eighteen and twenty-one to stock, merchandise, and handle beer or wine on or about the nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises. [1995 c 100 § 2.]

66.44.320 Sales of liquor to minors a violation. Every person who shall sell any intoxicating liquor to any minor shall be guilty of a violation of Title 66 RCW. [1973 1st ex.s. c 209 § 19; 1933 c 2 § 1; 1929 c 200 § 1; RRS § 7328-1.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.44.325 Unlawful transfer to a minor of an identification of age. Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic beverages shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service: **PROVIDED**, That corroborative testimony of a witness other than the minor shall be a condition precedent to conviction. [1987 c 101 § 2; 1961 c 147 § 1.]

Cards of identification: RCW 66.20.160 through 66.20.210.

66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty. No person may forge, alter, counterfeit, otherwise prepare or acquire and supply to a person under the age of twenty-one years a facsimile of any of the officially issued cards of identification that are required for presentation under RCW 66.16.040. A violation of this section is a gross misdemeanor punishable as provided by RCW 9A.20.021 except that a minimum fine of two thousand five hundred dollars shall be imposed. [1987 c 101 § 3.]

66.44.330 Prosecutions to be reported by prosecuting attorney and police court. See RCW 36.27.020(12).

66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for *class E and/or F licensed employers. Employers holding *class E and/or F licenses exclusively are permitted to allow their employees, between the ages of eighteen and twenty-one years, to sell, stock, and handle beer or wine in, on or about any establishment holding a *class E and/or class F license exclusively: **PROVIDED**, That there is an adult twenty-one years of age or older on duty supervising the sale of liquor at the licensed premises: **PROVIDED**, That minor employees may make deliveries of beer and/or wine purchased from licensees holding *class E and/or class F licenses exclusively, when delivery is made to cars of customers adjacent to such licensed premises but only, however, when the minor

employee is accompanied by the purchaser. [1986 c 5 § 1; 1981 1st ex.s. c 5 § 48; 1969 ex.s. c 38 § 1.]

***Reviser's note:** "Class E licenses" were redesignated as "grocery store licenses" by 1997 c 321 § 22 and "beer and/or wine specialty shop licenses" by 1997 c 321 §§ 22 and 23, effective July 1, 1998. RCW 66.24.370, governing class F licenses, was repealed by 1997 c 321 § 63. "Class F licenses" were replaced by "grocery store licenses" under RCW 66.24.360 and "beer and/or wine specialty shop licenses" under RCW 66.24.371, effective July 1, 1998.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for *class A, C, D and/or H licensed employers. Notwithstanding provisions of RCW 66.44.310, employees of *class A, C, D and/or H licensees eighteen years of age and over may take orders for, serve and sell liquor in any part of the licensed premises except cocktail lounges, bars, or other areas classified by the Washington state liquor control board as off-limits to persons under twenty-one years of age: PROVIDED, That such employees may enter such restricted areas to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing clean up work, setting up and arranging tables, delivering supplies, delivering messages, serving food, and seating patrons: PROVIDED FURTHER, That such employees shall remain in the areas off-limits to minors no longer than is necessary to carry out their aforementioned duties: PROVIDED FURTHER, That such employees shall not be permitted to perform activities or functions of a bartender. [1988 c 160 § 1; 1975 1st ex.s. c 204 § 1.]

***Reviser's note:** "Class A licenses" were redesignated as "limited service restaurant licenses" by 1997 c 321 § 18, effective July 1, 1998. "Limited service restaurant licenses" were subsequently redesignated as "beer and/or wine restaurant licenses" by 1998 c 126 § 4. RCW 66.24.340, governing class C licenses, was repealed by 1997 c 321 § 63. "Class C licenses" were replaced by "beer and wine retailer's licenses" under RCW 66.24.330 and "combined licenses" under RCW 66.24.354, effective July 1, 1998. "Class D licenses" were redesignated as "snack bar licenses" by 1997 c 321 § 20, effective July 1, 1998. "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31, effective July 1, 1998. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5.

66.44.365 Juvenile driving privileges—Alcohol or drug violations. (1) If a juvenile thirteen years of age or older and under the age of eighteen is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, a juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or

subsequent violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 118; 1988 c 148 § 3.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

66.44.370 Resisting or opposing officers in enforcement of title. No person shall knowingly or wilfully resist or oppose any state, county, or municipal peace officer, or liquor enforcement officer, in the discharge of his/her duties under Title 66 RCW, or aid and abet such resistance or opposition. Any person who violates this section shall be guilty of a violation of this title and subject to arrest by any such officer. [1981 1st ex.s. c 5 § 27.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.800 Compliance by Washington wine commission. Nothing contained in chapter 15.88 RCW shall affect the compliance by the Washington wine commission with this chapter. [1987 c 452 § 17.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Chapter 66.98 CONSTRUCTION

Sections

66.98.010	Short title.
66.98.020	Severability and construction—1933 ex.s. c 62.
66.98.030	Effect of act on certain laws—1933 ex.s. c 62.
66.98.040	Effective date and application—1937 c 217.
66.98.050	Effective date and application—1939 c 172.
66.98.060	Rights of spirits, beer, and wine restaurant licensees—1949 c 5.
66.98.070	Regulations by board—1949 c 5.
66.98.080	Severability—1949 c 5.
66.98.090	Severability—1981 1st ex.s. c 5.
66.98.100	Effective date—1981 1st ex.s. c 5.

66.98.010 Short title. This act may be cited as the "Washington State Liquor Act." [1933 ex.s. c 62 § 1; RRS § 7306-1.]

66.98.020 Severability and construction—1933 ex.s. c 62. If any clause, part or section of this act shall be adjudged invalid, such judgment shall not affect nor invalidate the remainder of the act, but shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered. If the operation of any clause, part or section of this act shall be held to impair the obligation of contract, or to deny to any person any right or protection secured to him by the Constitution of the United States of America, or by the Constitution of the state of Washington, it is hereby declared that, had the invalidity of such clause, part or section been considered at the time of the enactment of this act, the remainder of the act would nevertheless have been adopted

without such and any and all such invalid clauses, parts or sections. [1933 ex.s. c 62 § 94; RRS § 7306-94.]

66.98.030 Effect of act on certain laws—1933 ex.s. c 62. Nothing in this act shall be construed to amend or repeal chapter 2 of the Laws of 1933, or any portion thereof. [1933 ex.s. c 62 § 95; RRS § 7306-95.]

Reviser's note: 1933 c 2 referred to herein consisted of two sections, section 1 of which is codified as RCW 66.44.320 and section 2 was a repeal of earlier liquor laws.

66.98.040 Effective date and application—1937 c 217. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: PROVIDED, HOWEVER, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under *chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1937: AND PROVIDED FURTHER, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1937 c 217 § 8; RRS § 7306-97.]

***Reviser's note:** Chapter 62, Laws of 1933, extraordinary session, is the basic liquor act codified in this title. The 1937 act in which it appears amended it.

66.98.050 Effective date and application—1939 c 172. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: PROVIDED, HOWEVER, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under *chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935 and chapters 62 and 217, Laws of 1937, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1939: AND PROVIDED FURTHER, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1939 c 172 § 11; RRS § 7306-97a.]

***Reviser's note:** Chapter 62, Laws of 1933, extraordinary session, is the basic liquor act codified in this title. The 1939 act in which it appears amended it.

66.98.060 Rights of spirits, beer, and wine restaurant licensees—1949 c 5. Notwithstanding any provisions of chapter 62, Laws of 1933 ex. sess., as last amended, or of any provisions of any other law which may otherwise be applicable, it shall be lawful for the holder of a spirits, beer, and wine restaurant license to sell beer, wine, and spirituous liquor in this state in accordance with the terms of chapter 5, Laws of 1949. [1998 c 126 § 15; 1997 c 321 § 54; 1949 c 5 § 14; No RRS. Formerly: RCW 66.24.460.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.98.070 Regulations by board—1949 c 5. For the purpose of carrying into effect the provisions of this act, the board shall have the same power to make regulations not inconsistent with the spirit of this act as is provided by RCW 66.08.030. [1949 c 5 § 15; No RRS. Formerly: RCW 66.24.470.]

66.98.080 Severability—1949 c 5. If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as whole or any section, provision, or part thereof not adjudged to be invalid. [1949 c 5 § 17; No RRS.]

66.98.090 Severability—1981 1st ex.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 1st ex.s. c 5 § 50.]

66.98.100 Effective date—1981 1st ex.s. c 5. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 1st ex.s. c 5 § 51.]

Title 67

SPORTS AND RECREATION—CONVENTION FACILITIES

Chapters

- 67.04** Baseball.
- 67.08** Boxing, sparring, and wrestling.
- 67.12** Dancing, billiards, pool, and bowling.
- 67.14** Billiard tables, bowling alleys, and miscellaneous games—1873 act.
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Chapter 67.04

BASEBALL

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67.04.010 Penalty for bribery in relation to baseball game. Any person who shall bribe or offer to bribe, any baseball player with intent to influence his play, action or conduct in any baseball game, or any person who shall bribe or offer to bribe any umpire of a baseball game, with intent to influence him to make a wrong decision or to bias his opinion or judgment in relation to any baseball game or any play occurring therein, or any person who shall bribe or offer to bribe any manager, or other official of a baseball club, league or association, by whatsoever name called, conducting said game of baseball to throw or lose a game of baseball, shall be guilty of a gross misdemeanor. [1921 c 181 § 1; RRS § 2321-1.]

67.04.020 Penalty for acceptance of bribe. Any baseball player who shall accept or agree to accept, a bribe offered for the purpose of wrongfully influencing his play, action or conduct in any baseball game, or any umpire of a baseball game who shall accept or agree to accept a bribe offered for the purpose of influencing him to make a wrong decision, or biasing his opinions, rulings or judgment with regard to any play, or any manager of a baseball club, or club or league official, who shall accept, or agree to accept, any bribe offered for the purpose of inducing him to lose or cause to be lost any baseball game, as set forth in RCW 67.04.010, shall be guilty of a gross misdemeanor. [1921 c 181 § 2; RRS § 2321-2.]

67.04.030 Elements of offense outlined. To complete the offenses mentioned in RCW 67.04.010 and 67.04.020, it shall not be necessary that the baseball player, manager, umpire or official, shall, at the time, have been actually employed, selected or appointed to perform their respective duties; it shall be sufficient if the bribe be offered, accepted or agreed to with the view of probable employment, selection or appointment of the person to whom the bribe is offered, or by whom it is accepted. Neither shall it be necessary that such baseball player, umpire or manager actually play or participate in a game or games concerning which said bribe is offered or accepted; it shall be sufficient if the bribe be given, offered or accepted in view of his or their possibly participating therein. [1921 c 181 § 3; RRS § 2321-3.]

67.04.040 "Bribe" defined. By a "bribe" as used in RCW 67.04.010 through 67.04.080, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing, directly or indirectly, any baseball player, manager, umpire, club or league official, to see which game an admission fee may be charged, or in which game of baseball any player, manager or umpire is paid any compensation for his services. Said

bribe as defined in RCW 67.04.010 through 67.04.080 need not be direct; it may be such as is hidden under the semblance of a sale, bet, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. [1921 c 181 § 4; RRS § 2321-4.]

67.04.050 Corrupt baseball playing—Penalty. Any baseball player, manager or club or league official who shall commit any wilful act of omission or commission in playing, or directing the playing, of a baseball game, with intent to cause the ball club, with which he is affiliated, to lose a baseball game; or any umpire officiating in a baseball game, or any club or league official who shall commit any wilful act connected with his official duties for the purpose and with the intent to cause a baseball club to win or lose a baseball game, which it would not otherwise have won or lost under the rules governing the playing of said game, shall be guilty of a gross misdemeanor. [1921 c 181 § 5; RRS § 2321-5.]

67.04.060 Venue of action. In all prosecutions under RCW 67.04.010 through 67.04.080 the venue may be laid in any county where the bribe herein referred to was given, offered or accepted, or in which the baseball game was played in relation to which the bribe was offered, given or accepted, or the acts referred to in RCW 67.04.050 committed. [1921 c 181 § 6; RRS § 2321-6.]

67.04.070 Bonus or extra compensation. Nothing in RCW 67.04.010 through 67.04.080 shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager or baseball player by any person to encourage such manager or player to a higher degree of skill, ability or diligence in the performance of his duties. [1921 c 181 § 7; RRS § 2321-7.]

67.04.080 Scope of provisions as to bribes. RCW 67.04.010 through 67.04.080 shall apply only to baseball league and club officials, umpires, managers and players who act in such capacity in games where the public is generally invited to attend and a general admission fee is charged. [1921 c 181 § 8; RRS § 2321-8.]

67.04.090 Baseball contracts with minors—Definitions. As used in RCW 67.04.090 through 67.04.150 the following terms shall have the following meanings:

(1) "Minor" shall mean any person under the age of eighteen years, and who has not graduated from high school: PROVIDED, That should he become eighteen during his senior year he shall be a minor until the end of the school year;

(2) "Contract" shall mean any contract, agreement, bonus or gratuity arrangement, whether oral or written;

(3) "Organized professional baseball" shall mean and include all persons, firms, corporations, associations, or teams or clubs, or agents thereof, engaged in professional baseball, or in promoting the interest of professional baseball, or sponsoring or managing other persons, firms, corporations, associations, teams, or clubs who play baseball in any of the major or minor professional baseball leagues, or any such league hereafter organized;

(4) "Agent" shall, in addition to its generally accepted legal meaning, mean and include those persons commonly known as "baseball scouts";

(5) "Prosecuting attorney" shall mean the prosecuting attorney, or his regular deputy, of the county in which the minor's parent is domiciled;

(6) "Parent" shall mean parent, parents or guardian. [1951 c 78 § 2.]

Purpose—1951 c 78: "The welfare of the children of this state is of paramount interest to the people of the state. It is the purpose of this act to foster the education of minors and to protect their moral and physical well-being. Organized professional baseball has in numerous cases induced minors to enter into contracts and agreements which have been unfair and injurious to them." [1951 c 78 § 1.]

Severability—1951 c 78: "If any portion, section, or clause of this act, shall be declared or found invalid by any court of competent jurisdiction, such adjudication shall not affect the remainder of this act." [1951 c 78 § 9.]

67.04.100 Contract with minor void unless approved. Any contract between organized professional baseball and a minor shall be null and void and contrary to the public policy of the state, unless and until such contract be approved as hereinafter provided. [1951 c 78 § 3.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.110 Contract with minor—Approval by prosecuting attorney. No contract within RCW 67.04.090 through 67.04.150 shall be null and void, nor shall any of the prohibitions or penalties provided in RCW 67.04.090 through 67.04.150 be applicable if such contract be first approved in writing by the prosecuting attorney. Such approval may be sought jointly, or at the request of either party seeking a contract. [1951 c 78 § 4.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.120 Contract with minor—Basis of approval. The prosecuting attorney shall have the authority to examine all the parties to the proposed contract and any other interested person and shall approve such contract if the following facts and circumstances are found to exist:

(1) That the minor has not been signed, approached, or contacted, directly or indirectly, pertaining to a professional baseball contract except as herein permitted by approval of the prosecuting attorney;

(2) That the minor has been apprised of the fact that approval of the contract may deprive him of his amateur status;

(3) That the parent of the minor and the minor have consented to the contract;

(4) That the prosecuting attorney has concluded that the contract conforms to the provisions of RCW 67.04.090 through 67.04.150, and is a valid and binding contract;

(5) That the contract permits the minor to have at least five months available each year to continue his high school education. [1951 c 78 § 5.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

Employment permits: RCW 28A.225.080.

67.04.130 Contract with minor—Effect of disapproval. Should the prosecuting attorney not approve the contract as above provided, then such contract shall be void, and the status of the minor shall remain as if no contract had been made, unless the prosecuting attorney's determination be the result of arbitrary or capricious action. [1951 c 78 § 6.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.140 Negotiations with minor prohibited. No representative of organized professional baseball nor agent, nor person purporting to be able to represent any institution in organized baseball, whether so authorized to represent such institution or not, shall initiate or participate in any negotiations which would induce an evasion of this law in any way, including the removal of any minor to another state, or violate the minor's high school athletic eligibility. [1951 c 78 § 7.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.150 Contract with minor—Penalty for violation. Any person, firm, corporation, association, or agent thereof, who enters into a contract with a minor, or gives a bonus or any gratuity to any minor to secure the minor's promise to enter into a contract in violation of the provisions of RCW 67.04.090 through 67.04.150, or shall otherwise violate any provisions of RCW 67.04.090 through 67.04.150, shall be guilty of a gross misdemeanor. [1951 c 78 § 8.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

Chapter 67.08

BOXING, SPARRING, AND WRESTLING

Sections

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67.08.901	Severability—1993 c 278.
67.08.902	Effective date—1993 c 278.
67.08.903	Severability—1997 c 205.

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

(1) "Amateur" means a person who engages in athletic activities as a pastime and not as a professional.

(2) "Boxing" means a contest in which the contestants exchange blows with their fists, but does not include professional wrestling.

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

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

(5) "Event" includes, but is not limited to, a boxing, wrestling, or martial arts contest, sparring, fisticuffs, match, show, or exhibition.

(6) "Face value" means the dollar value of a ticket or order, which value must reflect the dollar amount that the customer is required to pay or, for a complimentary ticket, would have been required to pay to purchase a ticket with equivalent seating priority, in order to view the event.

(7) "Gross receipts" means: The amount received from the sale of souvenirs, programs, and other concessions received by the promoter; and the face value of all tickets sold and complimentary tickets redeemed.

(8) "Kickboxing" means a type of boxing in which blows are delivered with the hand and any part of the leg below the hip, including the foot.

(9) "Martial arts" means a type of boxing including sumo, judo, karate, kung fu, tae kwon do, or other forms of full-contact martial arts or self-defense conducted on a full-contact basis.

(10) "Professional" means a person who has received or competed for money or other articles of value for participating in an event.

(11) "Promoter" means a person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, stages, holds, or gives an event in this state involving a professional boxing, martial arts, or wrestling event, or shows or causes to be shown in this state a closed circuit telecast of a match involving a professional participant whether or not the telecast originates in this state.

(12) "Tough man/rough man contest or competition" means an event that utilizes unlicensed, untrained, or otherwise licensed participants who engage in unsanctioned activities that do not comply with this chapter, including a

full-contact, tournament-style martial arts contest, match, show, or exhibition in which contestants compete more than once per day.

(13) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a physical struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both. [1997 c 205 § 1; 1993 c 278 § 8; 1989 c 127 § 1.]

67.08.007 Officers, employees, inspectors. The department may employ and fix the compensation of such officers, employees, and inspectors as may be necessary to administer the provisions of this chapter as amended. [1993 c 278 § 9; 1959 c 305 § 2; 1933 c 184 § 4; RRS § 8276-4. Formerly RCW 43.48.040.]

67.08.010 Licenses for boxing, martial arts, and wrestling events—Telecasts—Revocation, suspension, and denial. (1) The department shall have power to issue and for cause to revoke, suspend, or deny a license to conduct, hold, or promote boxing, martial arts, or wrestling events or closed circuit telecasts of these events as provided in this chapter under such terms and conditions and at such times and places as the department may determine.

(2) In case the department revokes, suspends, or denies any license or issues a fine, such applicant, or license shall be entitled, upon application, to a hearing to be held under chapter 34.05 RCW, the administrative procedure act. [1997 c 205 § 2; 1993 c 278 § 10; 1989 c 127 § 13; 1975-'76 2nd ex.s. c 48 § 2; 1933 c 184 § 7; RRS § 8276-7. Prior: 1909 c 249 § 304; 1890 p 109 § 1; 1886 p 82 § 1.]

67.08.015 Duties of department—License issuance, denial, revocation, and suspension—Exemptions—Rules. (1) In the interest of ensuring the safety and welfare of the participants, the department shall have power and it shall be its duty to direct, supervise, and control all boxing, martial arts, and wrestling events conducted within this state and an event may not be held in this state except in accordance with the provisions of this chapter. The department may, in its discretion, issue and for cause deny, revoke, or suspend a license to promote, conduct, or hold boxing, kickboxing, martial arts, or wrestling events where an admission fee is charged by any person, club, corporation, organization, association, or fraternal society.

(2) All boxing, kickboxing, martial arts, or wrestling events that:

(a) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(b) Are entirely amateur events promoted on a nonprofit basis or for charitable purposes; are not subject to the licensing provisions of this chapter. A boxing, martial arts, kickboxing, or wrestling event may not be conducted within the state except under a license issued in accordance with this chapter and the rules of the department except as provided in this section. [1997 c 205 § 3;

1993 c 278 § 12; 1989 c 127 § 14; 1977 c 9 § 2. Prior: 1975-'76 2nd ex.s. c 48 § 3; 1975 c 1 § 1; 1973 c 53 § 1; 1951 c 48 § 2.]

67.08.017 Director—Powers. The director or the director's designee has the following authority in administering this chapter:

(1) Adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) Issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;

(3) Take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(4) Compel attendance of witnesses at hearings;

(5) In the course of investigating a complaint or report of unprofessional conduct, conduct practice reviews;

(6) Take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(7) Use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;

(8) Enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(9) Adopt standards of professional conduct or practice;

(10) In the event of a finding of unprofessional conduct by an applicant or license holder, impose sanctions against a license applicant or license holder as provided by this chapter;

(11) Enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(12) Designate individuals authorized to sign subpoenas and statements of charges;

(13) Employ the investigative, administrative, and clerical staff necessary for the enforcement of this chapter;

(14) Compel the attendance of witnesses at hearings; and

(15) Establish and assess fines for violations of this chapter that may be subject to payment from a contestant's purse. [1997 c 205 § 4; 1993 c 278 § 11.]

67.08.030 Promoters—Bond—Medical insurance.

(1) Every promoter, as a condition for receiving a license, shall file with the department a surety bond in an amount to be determined by the department, but not less than ten thousand dollars, to cover all of the event locations applied for within the state during the license period, conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes, officials, and contracts as provided for herein and the observance of all rules of the department.

(2) Boxing promoters must obtain medical insurance in an amount set by the director, but not less than fifty thousand dollars, to cover any injuries incurred by participants at the time of each event held in this state and provide proof of insurance to the department seventy-two hours before each event. The evidence of insurance must specify, at a minimum, the name of the insurance company, the insurance policy number, the effective date of the coverage, and evidence that each participant is covered by the insurance. The promoter must pay any deductible associated with the insurance policy.

(3) In lieu of the insurance requirement of subsection (2) of this section, a promoter of the boxing event who so chooses may, as a condition for receiving a license under this chapter, file proof of medical insurance coverage that is in effect for the entire term of the licensing period.

(4) The department shall cancel a boxing event if the promoter fails to provide proof of medical insurance within the proper time frame. [1997 c 205 § 5; 1993 c 278 § 13; 1989 c 127 § 6; 1933 c 184 § 9; RRS § 8276-9.]

67.08.040 Issuance of license. Upon the approval by the department of any application for a license, as hereinabove provided, and the filing of the bond the department shall forthwith issue such license. [1993 c 278 § 14; 1975-'76 2nd ex.s. c 48 § 4; 1933 c 184 § 10; RRS § 8276-10.]

67.08.050 Statement and report of event—Tax on gross receipts—Complimentary tickets. (1) Any promoter shall within seven days prior to the holding of any event file with the department a statement setting forth the name of each licensee who is a potential participant, his or her manager or managers, and such other information as the department may require. Participant changes regarding a wrestling event may be allowed after notice to the department, if the new participant holds a valid license under this chapter. The department may stop any wrestling event in which a participant is not licensed under this chapter.

(2) Upon the termination of any event the promoter shall file with the designated department representative a written report, duly verified as the department may require showing the number of tickets sold for the event, the price charged for the tickets and the gross proceeds thereof, and such other and further information as the department may require. The promoter shall pay to the department at the time of filing the report under this section a tax equal to five percent of such gross receipts. However, the tax may not be less than twenty-five dollars. The five percent of such gross receipts shall be immediately paid by the department into the state general fund.

(3) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. It must include charges and fees, such as dinner, gratuity, parking, surcharges, or other charges or fees that are charged to and must be paid by the customer in order to view the event. The number of untaxed complimentary tickets shall be limited to five percent of the total tickets sold per event location, not to exceed three hundred tickets. All complimentary tickets exceeding this exemption shall be subject to taxation. [1997 c 205 § 6; 1993 c 278 § 15; 1989 c 127 § 7; 1933 c 184 § 11; RRS § 8276-11. FORMER

PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

Emergency—Effective date—1939 c 54: "That this act is necessary for the immediate support of the state government and its existing public institutions and shall take effect April 1, 1939." [1939 c 54 § 6; no RRS.]

67.08.055 Simultaneous or closed circuit telecasts—Report—Tax on gross receipts. Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or show on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the department a verified written report on a form which is supplied by the department showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the department a tax equal to five percent of such gross receipts paid for admission to the showing of the contest, match or exhibition. In no event, however, shall the tax be less than twenty-five dollars. The tax shall apply uniformly at the same rate to all persons subject to the tax. Such receipts shall be immediately paid by the department into the general fund of the state. [1993 c 278 § 16; 1989 c 127 § 15; 1975-'76 2nd ex.s. c 48 § 5.]

67.08.060 Inspectors—Duties—Fee and travel expenses for attending events. The department may appoint official inspectors at least one of which, in the absence of a member of the department, shall be present at any event held under the provisions of this chapter. Such inspectors shall carry a card signed by the director evidencing their authority. It shall be their duty to see that all rules of the department and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any event, and such inspector is authorized to receive from the licensee conducting the event the statement of receipts herein provided for and to immediately transmit such reports to the department. Each inspector shall receive a fee and travel expenses from the promoter to be set by the director for each event officially attended. [1997 c 205 § 7; 1993 c 278 § 17; 1989 c 127 § 16; 1988 c 19 § 2; 1975-'76 2nd ex.s. c 34 § 154; 1959 c 305 § 4; 1933 c 184 § 12; RRS § 8276-12.]

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

67.08.080 Rounds and bouts limited—Weight of gloves—Rules. A boxing, kickboxing, or martial art[s] event held in this state may not be for more than ten rounds and no one round of any bout shall be scheduled for longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state, regional, national, or world championships the department may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds. A contestant in any boxing event under this chapter may not be permitted to wear gloves weighing less than eight ounces. The director shall adopt rules to assure clean and sportsman-like conduct on the part of all contestants and officials, and the orderly and proper conduct of the event in all respects,

and to otherwise make rules consistent with this chapter, but such rules shall apply only to events held under the provisions of this chapter. [1997 c 205 § 8; 1993 c 278 § 18; 1989 c 127 § 8; 1974 ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

67.08.090 Physician's attendance—Examination of contestants. (1) Each contestant for boxing events shall be examined within twenty-four hours before the contest by a competent physician appointed by the department. The physician shall report in writing and over his or her signature before the event the physical condition of each and every contestant to the inspector present at such contest. No contestant whose physical condition is not approved by the examining physician shall be permitted to participate in any event. Blank forms of physicians' report shall be provided by the department and all questions upon such blanks shall be answered in full. The examining physician shall be paid a fee and travel expenses by the promoter.

(2) The department may require that a physician be present at a wrestling event. The promoter shall pay any physician present at a wrestling event. A boxing event may not be held unless a licensed physician of the department or his or her duly appointed representative is present throughout the event.

(3) Any practicing physician and surgeon may be selected by the department as the examining physician. Such physician present at such contest shall have authority to stop any event when in the physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the physician's duty to stop the event.

(4) The department may have a participant in a wrestling event examined by a physician appointed by the department prior to the event. A participant in a wrestling event whose condition is not approved by the examining physician shall not be permitted to participate in the event. [1997 c 205 § 9; 1993 c 278 § 19; 1989 c 127 § 9; 1933 c 184 § 15; RRS § 8276-15.]

67.08.100 Annual licenses—Fees—Qualifications—Revocation—Exceptions. (1) The department upon receipt of a properly completed application and payment of a nonrefundable fee, may grant an annual license to an applicant for the following: (a) Promoter; (b) manager; (c) boxer; (d) second; (e) wrestling participant; (f) inspectors; (g) judge; (h) timekeeper; (i) announcers; and (j) physicians.

(2) Any license may be revoked, suspended, or denied by the director for a violation of this chapter or a rule adopted by the director.

(3) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(4) The referees, judges, timekeepers, physicians, and inspectors for any boxing event shall be designated by the department from among licensed officials.

(5) The referee for any wrestling event shall be provided by the promoter and shall be licensed as a wrestling participant.

(6) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance

with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(7) A person may not be issued a license if the person has an unpaid fine outstanding to the department.

(8) A person may not be issued a license unless they are at least eighteen years of age.

(9) This section shall not apply to contestants or participants in events at which only amateurs are engaged in contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the defense department or any recognized amateur sanctioning body recognized by the department, holding and promoting athletic events and where all funds are used primarily for the benefit of their members. Upon request of the department, a promoter, contestant, or participant shall provide sufficient information to reasonably determine whether this chapter applies. [1997 c 205 § 10; 1997 c 58 § 864; 1993 c 278 § 20; 1989 c 127 § 10; 1959 c 305 § 6; 1933 c 184 § 16; RRS § 8276-16. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part, now codified in RCW 67.08.025.]

Reviser's note: *(1) 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

(2) This section was amended by 1997 c 58 § 864 and by 1997 c 205 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

67.08.110 Participation in purse or fee—Conducting sham or fake event—Revocation of license. Any person or any member of any group of persons or corporation promoting boxing events who shall participate directly or indirectly in the purse or fee of any manager of any boxers or any boxer and any licensee who shall conduct or participate in any sham or fake boxing event shall be subject to license revocation and such revoked licensee shall not be entitled to receive any license issued under this chapter. [1997 c 205 § 11; 1993 c 278 § 21; 1989 c 127 § 11; 1933 c 184 § 17; RRS § 8276-17.]

67.08.120 Violation of rules—Penalties. Any unlicensed participant contestant or licensee who violates any rule of the department shall be fined, suspended, revoked, or any combination thereof, by order of the director. Assessed fines shall not exceed five hundred dollars for each violation of this chapter or any rule of the department. [1997 c 205 § 12; 1993 c 278 § 22; 1989 c 127 § 12; 1933 c 184 § 18; RRS § 8276-18.]

67.08.130 Failure to make report—Additional tax—Notice—Penalties for delinquency. Whenever any licensee shall fail to make a report of any event within the time prescribed by this chapter or when such report is unsatisfactory to the department, the director may examine the books and records of such licensee; he or she may subpoena and examine under oath any officer of such licensee and such other person or persons as he or she may deem necessary to a determination of the total gross receipts from any event and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, and if such licensee shall fail to pay such additional tax within twenty days after service of such notice such delinquent licensee shall be subject to revocation of its license and shall be disqualified from receiving any new license. In addition, such licensee shall be liable to this state in the penal sum of one thousand dollars to be collected by the attorney general by civil action in the name of the state in the manner provided by law. [1997 c 205 § 13; 1993 c 278 § 23; 1933 c 184 § 19; RRS § 8276-19.]

67.08.140 Penalty for conducting events without license—Injunctions. Any person, club, corporation, organization, association, fraternal society, participant, or promoter conducting or participating in boxing or wrestling events within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor or excepting the events excluded from the operation of this chapter by RCW 67.08.015. The attorney general, each prosecuting attorney, the department, or any citizen of any county where any person, club, corporation, organization, association, fraternal society, promoter, or participant shall threaten to hold, or appears likely to hold or participate in athletic events in violation of this chapter, may in accordance with the laws of this state governing injunctions, enjoin such person, club, corporation, organization, association, fraternal society, promoter, or participant from holding or participating in the event. [1997 c 205 § 14; 1993 c 278 § 24; 1989 c 127 § 17; 1988 c 19 § 3; 1959 c 305 § 7; 1951 c 48 § 1; 1933 c 184 § 22; RRS § 8276-22.]

67.08.150 General penalty. Any person, firm or corporation violating any of the provisions of this chapter for which no penalty is herein provided shall be guilty of a misdemeanor. [1933 c 184 § 24; RRS § 8276-24.]

67.08.160 Medical emergencies—Promoter's responsibility. A promoter shall have an ambulance or paramedical unit present at the arena in case a serious injury occurs unless an ambulance or paramedical unit is located within five miles of the arena and that unit is on call for such an occurrence. [1989 c 127 § 2.]

67.08.170 Security—Promoter's responsibility. A promoter shall ensure that adequate security personnel are in attendance at a wrestling or boxing event to control fans in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the arena or other facility, and the

department. [1997 c 205 § 15; 1993 c 278 § 25; 1989 c 127 § 3.]

67.08.180 Prohibitions—Penalties. (1) It is a violation of this chapter for any promoter or person associated with or employed by any promoter to destroy any ticket or ticket stub, whether sold or unsold, within three months after the date of any event.

(2) It is a violation of this chapter for a wrestling participant to deliberately cut himself or herself or otherwise mutilate himself or herself while participating in a wrestling event.

(3) The department shall revoke the license of a licensee convicted under chapter 69.50 RCW.

(4) The director shall revoke the license of a licensee testing positive for illegal use of a controlled substance as defined in RCW 69.50.101, and shall deny the application of an applicant testing positive for a controlled substance as defined in RCW 69.50.101.

(5) The striking of any person that is not a licensed participant at a wrestling event constitutes grounds for suspension, fine, revocation, or any combination thereof. [1997 c 205 § 16; 1989 c 127 § 4.]

67.08.200 Unprofessional conduct—Written complaint—Investigation—Immunity of complainant. A person, including but not limited to a consumer, licensee, corporation, organization, and state and local governmental agency, may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the complaint. If the department determines that the complaint merits investigation or if the department has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the department shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1997 c 205 § 17.]

67.08.210 Unprofessional conduct—Investigation—Notice of charge—Request for hearing—Time of hearing—Notice. (1) If the department determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, the department shall prepare and serve upon the license holder or applicant a statement of charge or charges. The statement of charge or charges must be accompanied by a notice that the license holder or applicant may request a hearing to contest the charge or charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order under RCW 34.05.440.

(2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days before the hearing, specifying the time, date, and place of hearing. [1997 c 205 § 18.]

67.08.220 Unprofessional conduct—Order upon finding—Penalties—Costs. Upon a finding that a license holder or applicant has committed unprofessional conduct the director may issue an order providing for one or any combination of the following:

(1) Revocation of the license;

(2) Suspension of the license for a fixed or indefinite term;

(3) Requiring the satisfactory completion of a specific program of remedial education;

(4) Compliance with conditions of probation for a designated period of time;

(5) Payment of a fine not to exceed five hundred dollars for each violation of this chapter;

(6) Denial of the license request;

(7) Corrective action, including paying contestants the contracted purse or compensation; or

(8) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1997 c 205 § 19.]

67.08.230 Fine—Order for payment—Enforcement—Proof of validity. If an order for payment of a fine is made as a result of a hearing and timely payment is not made as directed in the final order, the director may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the director may have as to any licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review under chapter 34.05 RCW.

In addition for enforcement of an order of payment of a fine the director's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1997 c 205 § 20.]

67.08.240 Unprofessional conduct—What constitutes. The following conduct, acts, or conditions constitute unprofessional conduct for a license holder or applicant under this chapter:

(1) Conviction of a gross misdemeanor, felony, or the commission of an act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96 RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement of a license;

- (3) Advertising that is false, fraudulent, or misleading;
- (4) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;
- (5) Suspension, revocation, or restriction of a license to act as a professional athletic licensee by competent authority in a state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;
- (6) Violation of a statute or administrative rule regulating professional athletics;
- (7) Failure to cooperate with the department's investigations by:
 - (a) Not furnishing papers or documents;
 - (b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or
 - (c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;
- (8) Failure to comply with an order issued by the director or an assurance of discontinuance entered into by the director;
- (9) Aiding or abetting an unlicensed person to act in a manner that requires a professional athletics licensee [license];
- (10) Misrepresentation or fraud in any aspect of the conduct of a professional athletics event; and
- (11) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the department or by the use of threats or harassment against any person to prevent them from providing evidence in a disciplinary proceeding or other legal action. [1997 c 205 § 21.]

67.08.250 Unlicensed practice or conduct violating chapter—Investigation—Cease and desist orders—Injunction in name of state—Criminal liability not precluded—Penalty. (1) The director shall investigate complaints concerning unlicensed practice or conducting boxing, martial arts, or wrestling events in violation of this chapter. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person violating this chapter from criminal prosecution, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order may be enforced under RCW 7.71.030. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(2) The attorney general, a county prosecuting attorney, the director, a board, or a person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin a person practicing without a license from engaging in the practice until the required license is secured. However, the injunction shall

not relieve the person so practicing without a license from criminal prosecution for the practice, but the remedy by injunction shall be in addition to any criminal liability.

(3) The practice without a license when required by this chapter constitutes a gross misdemeanor. [1997 c 205 § 22.]

67.08.260 Violation of injunction—Penalties—Jurisdiction. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be paid to the department. For the purpose of this section, the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1997 c 205 § 23.]

67.08.300 Immunity of director and director's agents. The director or individuals acting on the director's behalf are immune from suit in an action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter. [1997 c 205 § 24.]

67.08.900 Severability—1933 c 184. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1933 c 184 § 25; RRS § 8276-25.]

67.08.901 Severability—1993 c 278. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 278 § 27.]

67.08.902 Effective date—1993 c 278. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 278 § 28.]

67.08.903 Severability—1997 c 205. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 205 § 26.]

Chapter 67.12

DANCING, BILLIARDS, POOL, AND BOWLING

Sections

- 67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees.
- 67.12.110 License required for rural pool halls, billiard halls, and bowling alleys.

Regulations of places of amusement by cities and towns, see under applicable class of city or town: Title 35 RCW and RCW 35A.11.020.

67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees. Counties are authorized to adopt ordinances to license and regulate public dances and other public recreational or entertainment activities in the unincorporated areas of the county whether or not held inside or outside of a building and whether or not admission charges are imposed.

License fees may be adequate to finance the costs of issuing the license and enforcing the regulations, including related law enforcement activities. [1987 c 250 § 1.]

67.12.110 License required for rural pool halls, billiard halls, and bowling alleys. The county legislative authority of each county in the state of Washington shall have sole and exclusive authority and power to regulate, restrain, license, or prohibit the maintenance or running of pool halls, billiard halls, and bowling alleys outside of the incorporated limits of each incorporated city, town, or village in their respective counties: PROVIDED, That the annual license fee for maintenance or running such pool halls, billiard halls, and bowling alleys shall be fixed in accordance with RCW 36.32.120(3), and which license fee shall be paid annually in advance to the appropriate county official: PROVIDED FURTHER, That nothing herein or elsewhere shall be so construed as to prevent the county legislative authority from revoking any license at any time prior to the expiration thereof for any cause by such county legislative authority deemed proper. And if said county legislative authority revokes said license it shall refund the unearned portion of such license. [1985 c 91 § 10; 1909 c 112 § 1; RRS § 8289.]

Licensing under 1873 act: Chapter 67.14 RCW.

Chapter 67.14

BILLIARD TABLES, BOWLING ALLEYS, AND MISCELLANEOUS GAMES—1873 ACT

Sections

67.14.010	Hawkers and auctioneers must procure license—Exceptions
67.14.020	Sale or other disposition of liquor—County license—Penalty.
67.14.030	Hawkers and auctioneers—Issuance of license.
67.14.040	Retail liquor license.
67.14.050	Wholesale liquor license—Billiard table, bowling alley licenses.
67.14.060	Liquor sales, keeping games, without license—Penalty.
67.14.070	Purchase of license—Bond.
67.14.080	Duration of license.
67.14.090	Issuance of license.
67.14.100	When contrivance deemed kept for hire.
67.14.110	Druggists excepted.
67.14.120	Disposition of fees, fines, and forfeitures

Reviser's note: The territorial act codified in this chapter, though for the most part obsolete, has never been expressly repealed. "An Act in relation to licenses," it empowers the county commissioners to license hawkers and auctioneers, persons dealing in intoxicating liquors, and persons conducting bowling alleys, billiard tables and other games. The auctioneer sections have been codified as RCW 36.71.070 and 36.71.080. As to the sections relating to intoxicating liquors, it seems clear that this field has been preempted by the state; see RCW 66.08.120. For a later enactment concerning the licensing of rural pool halls, billiard halls, and bowling alleys, see RCW 67.12.110.

Alcoholic beverage control: Title 66 RCW.

67.14.010 Hawkers and auctioneers must procure license—Exceptions. See RCW 36.71.070.

67.14.020 Sale or other disposition of liquor—County license—Penalty. If any person shall sell or dispose of any spirituous, malt, or fermented liquors or wines, in any quantity less than one gallon, without first obtaining a license therefor as hereinafter provided, such person shall, for each and every such offense, be liable to a fine of not less than five nor more than fifty dollars, with costs of prosecution. [1873 p 437 § 2; Code 1881, Bagley's Supp. p 26 § 2.]

67.14.030 Hawkers and auctioneers—Issuance of license. See RCW 36.71.080.

67.14.040 Retail liquor license. The legislative authorities of each county, in their respective counties, shall have the power to grant license to persons to keep drinking houses or saloons therein, at which spirituous, malt, or fermented liquors and wines may be sold in less quantities than one gallon; and such license shall be called a retail license upon the payment, by the person applying for such license, of the sum of three hundred dollars a year into the county treasury, and the execution of a good and sufficient bond, executed to such county in the sum of one thousand dollars, to be approved by such legislative authority or the county auditor of the county in which such license is granted, conditioned that he will keep such drinking saloon or house in a quiet, peaceable, and orderly manner: PROVIDED, The foregoing shall not be so construed as to prevent the legislative authority of any county from granting licenses to drinking saloons or houses therein, when there is but little business doing, for less than three hundred dollars, but in no case for less than one hundred dollars per annum: AND PROVIDED FURTHER, That such license shall be used only in the precinct to which it shall be granted; PROVIDED FURTHER, that no license shall be used in more than one place at the same time. AND FURTHER PROVIDED, That no license shall be granted to any person to retail spirituous liquors until he shall furnish to the legislative authority satisfactory proof that he is a person of good moral character. [1973 1st ex.s. c 154 § 100; 1875 p 124 § 1; 1873 p 438 § 4; Code 1881, Bagley's Supp. p 26 § 4.]

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

67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses. Said county commissioners in their respective counties shall also have power to grant licenses to sell spirituous liquors and wines therein in greater quantities than one gallon, to be called a wholesale license upon payment of the sum of not to exceed one hundred dollars per annum into the county treasury by such person so desiring such license; also, upon payment of not to exceed a like sum into the county treasury by any person desiring a grocery license to sell lager beer to grant such person such license to sell for the period of one year. Also, upon the payment of such sum as the county commissioners may establish and fix, by order duly entered in the record of their proceedings,

not exceeding twenty-five dollars per annum for each billiard table, pigeon-hole table, or bowling alley, grant a license to any person applying for the same and giving such bond not exceeding two hundred dollars, as such commissioners may require: PROVIDED, No person shall be required to take out any license to sell any wine made from fruit produced by such person's own labor, in this territory. [1873 p 438 § 5; Code 1881, Bagley's Supp. p 27 § 5.]

License required for rural pool halls, billiard halls and bowling alleys: RCW 67.12.110.

67.14.060 Liquor sales, keeping games, without license—Penalty. Any person who shall sell spirituous liquors or wines in greater quantities than one gallon, or shall retail lager beer, or keep a billiard table or tables, or bowling alley or alleys for hire, in any county in this territory, without first taking out a license therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and cost shall be paid or they may otherwise be discharged by due course of law. [1873 p 439 § 6; Code 1881, Bagley's Supp. p 27 § 6; RRS § 8290. Formerly RCW 67.12.120.]

67.14.070 Purchase of license—Bond. Any person desiring a license to do any business provided by this chapter that a license shall be taken out for doing, shall have the same granted by paying to the county treasurer of the county where he wishes to carry on such business the maximum sum that the county commissioners are by this chapter authorized to fix therefor, and executing such bond, to be approved by the county auditor, as is provided in this chapter, shall be given before license shall issue for carrying on such business. [1873 p 439 § 7; Code 1881, Bagley's Supp. p 27 § 7.]

67.14.080 Duration of license. The licenses authorized to be granted by this chapter shall at the option of the person applying for the same, be granted for six, nine, or twelve months, and the person holding such license may transact the business thereby authorized at any place in the county where such license is granted: PROVIDED, That such business shall not be transacted in but one place in the county at a time. [1873 p 439 § 8; Code 1881, Bagley's Supp. p 27 § 8.]

67.14.090 Issuance of license. Upon presentation to the county auditor of any county of the certificate of the county treasurer that any person has paid into the county treasury the amount provided by this chapter, to be paid for the transaction of any business that a license may be granted to transact, and for the time provided in this chapter, and upon the execution and delivery to such auditor of the bond hereinbefore required, it shall be the duty of such county auditor to issue such license to such person so presenting such certificate, executing and delivering such bond and making application therefor, for the period of time that the money as shown by the treasurer's certificate would entitle

the person so presenting the same to have a license issued for. [1873 p 439 § 9; Code 1881, Bagley's Supp. p 27 § 9.]

67.14.100 When contrivance deemed kept for hire. Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming tables, or bowling alley or bowling alleys in a drinking saloon or house or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon or drinking house, shall, within the meaning of this chapter, be deemed to be keeping the same for hire. [1873 p 440 § 10; Code 1881, Bagley's Supp. p 28 § 10; RRS § 8291. Formerly RCW 67.12.130.]

67.14.110 Druggists excepted. None of the provisions of this chapter shall be held to apply to the sale by apothecaries or druggists of spirituous, malt, or fermented liquors or wines for medicinal purposes, upon the prescription of a practicing physician. [1873 p 440 § 11; Code 1881, Bagley's Supp. p 28 § 11.]

67.14.120 Disposition of fees, fines, and forfeitures. All fines and forfeitures collected under this chapter, and all moneys paid into the treasury of any county for licenses as aforesaid, shall be applied to school or county purposes as the local laws of such county may direct: PROVIDED, That this chapter shall not affect or apply to any private or local laws upon the subject of license in any county in this territory except King county, and no license shall be construed to mean more than the house or saloon kept by the same party or parties: PROVIDED, FURTHER, That no part of this chapter shall in any way apply to the county of Island: AND PROVIDED, FURTHER, That all moneys for licenses within the corporate limits of the town of Olympia shall be paid directly into the town treasury of said town as a municipal fund for the use of said town: AND PROVIDED FURTHER, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 226; 1969 ex.s. c 199 § 29; 1873 p 440 § 12; Code 1881, Bagley's Supp. p 28 § 12.]

Intent—1987 c 202: See note following RCW 2.04.190.

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Chapter 67.16 HORSE RACING

Sections

- 67.16.010 Definitions.
- 67.16.012 Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths.
- 67.16.014 Washington horse racing commission—Ex officio nonvoting members.
- 67.16.015 Washington horse racing commission—Organization—Secretary—Records—Annual reports.
- 67.16.017 Washington horse racing commission—Compensation and travel expenses.
- 67.16.020 Commission to fix time, place, duration of race meets—Race meet license—Participant's license, fee, duration.

- 67.16.040 Commission to regulate and license meets—Inspection.
- 67.16.050 Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure.
- 67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance.
- 67.16.070 Races for local breeders.
- 67.16.075 Breeder's awards and owner's bonuses—Eligibility—Certification.
- 67.16.080 Horses to be registered.
- 67.16.090 Races not limited to horses of same breed.
- 67.16.095 Sums paid to commission—Disposition—Retainage.
- 67.16.100 Disposition of fees—"Fair fund."
- 67.16.101 Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support small race courses.
- 67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks.
- 67.16.105 Gross receipts—Commission's percentage—Distributions.
- 67.16.106 Gross receipts—Commission's percentage—Nonprofit race meets.
- 67.16.110 Broadcasting and motion picture rights reserved.
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- 67.16.900 Severability—General repealer—1933 c 55.

Agister and trainer liens: Chapter 60.56 RCW.

Compulsive gamblers, information for: RCW 9.46.071.

Crimes and punishments—Gambling: Chapters 9.46 and 9.47 RCW.

Exemptions to commission merchant's act: RCW 20.01.030.

67.16.010 Definitions. Unless the context otherwise requires, words and phrases as used herein shall mean:

"Commission" shall mean the Washington horse racing commission, hereinafter created.

"Parimutuel machine" shall mean and include both machines at the track and machines at the satellite locations, that record parimutuel bets and compute the payoff.

"Person" shall mean and include individuals, firms, corporations and associations.

"Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, paint horse, appaloosa horse racing, arabian horse racing, or standard bred harness horse racing, where the parimutuel system is used.

Singular shall include the plural, and the plural shall include the singular; and words importing one gender shall be regarded as including all other genders. [1991 c 270 § 1; 1985 c 146 § 1; 1982 c 132 § 1; 1969 c 22 § 1; 1949 c 236 § 1; 1933 c 55 § 1; Rem. Supp. 1949 § 8312-1.]

Severability—1985 c 146: "If any provisions or application of any provisions of this chapter are invalidated by a court of law, the remainder of the chapter shall not be affected." [1985 c 146 § 15.]

Severability—1982 c 132: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 132 § 6.]

67.16.012 Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths. There is

hereby created the Washington horse racing commission, to consist of five commissioners, appointed by the governor and confirmed by the senate. The commissioners shall be citizens, residents, and qualified electors of the state of Washington, one of whom shall be a breeder of race horses and shall be of at least one year's standing. The terms of the members shall be six years. Each member shall hold office until his or her successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor. Before entering upon the duties of his or her office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand dollars, conditioned upon the faithful performance of his or her duties and the correct accounting and payment of all sums received and coming within his or her control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers. [1998 c 345 § 4; 1987 c 453 § 2; 1973 1st ex.s. c 216 § 1; 1969 ex.s. c 233 § 1; 1933 c 55 § 2; RRS § 8312-2. Formerly RCW 43.50.010.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Severability—1933 c 55: "In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act not adjudged unconstitutional. All acts in conflict herewith are hereby repealed." [1933 c 55 § 10.]

67.16.014 Washington horse racing commission—Ex officio nonvoting members. In addition to the commission members appointed under RCW 67.16.012, there shall be four ex officio nonvoting members consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; and (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives. The appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first. Members may be reappointed, and vacancies shall be filled in the same manner as original appointments are made. The ex officio members shall assist in the policy making, rather than administrative, functions of the commission, and shall collect data deemed essential to future legislative proposals and exchange information with the commission. The ex officio members shall be deemed engaged in legislative business while in attendance upon the business of the commission and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the horse racing commission fund as being expenses relative to commission business. [1991 c 270 § 2; 1987 c 453 § 3.]

67.16.015 Washington horse racing commission—Organization—Secretary—Records—Annual reports. The commission shall organize by electing one of its members chairman, and shall appoint and employ a secretary, and such other clerical, office, and other help as is

necessary in the performance of the duties imposed upon it by this chapter. The commission shall keep detailed records of all meetings and of the business transacted therein, and of all the collections and disbursements. The commission shall prepare and submit an annual report to the governor. All records of the commission shall be public records and as such, subject to public inspection. [1977 c 75 § 80; 1933 c 55 § 3; RRS § 8312-3. Formerly RCW 43.50.020.]

67.16.017 Washington horse racing commission—Compensation and travel expenses. Each member of the Washington horse racing commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 in going to, attending, and returning from meetings of the commission, and travel expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the commission, but in no event shall a commissioner be paid in any one fiscal year in excess of one hundred twenty days, except the chairman of the commission who may be paid for not more than one hundred fifty days. [1984 c 287 § 100; 1975-'76 2nd ex.s. c 34 § 155; 1969 ex.s. c 233 § 2.]

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

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

67.16.020 Commission to fix time, place, duration of race meets—Race meet license—Participant's license, fee, duration. It shall be the duty of the commission, as soon as it is possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern the race meets in this state. It shall determine and announce the place, time and duration of race meets for which license fees are exacted; and it shall be the duty of each person holding a license under the authority of this chapter, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with all rules and regulations promulgated and all orders issued by the commission. It shall be unlawful for any person to hold any race meet without having first obtained and having in force and effect a license issued by the commission as in this chapter provided; and it shall be unlawful for any owner, trainer or jockey to participate in race meets in this state without first securing a license therefor from the state racing commission, the fee for which shall be set by the commission which shall offset the cost of administration and shall not be for a period exceeding one year. [1989 c 385 § 5; 1985 c 146 § 2; 1982 c 32 § 1; 1933 c 55 § 4; RRS § 8312-4. Formerly RCW 67.16.020 and 67.16.030.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 32 § 6]

67.16.040 Commission to regulate and license meets—Inspection. The commission created by this chapter is hereby authorized, and it shall be its duty, to license, regulate and supervise all race meets held in this state under the terms of this chapter, and to cause the various race

courses of the state to be visited and inspected at least once a year. [1933 c 55 § 5; RRS § 8312-5.]

67.16.050 Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure. Every person making application for license to hold a race meet, under the provisions of this chapter shall file an application with the commission which shall set forth the time, the place, the number of days such meet will continue, and such other information as the commission may require. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue. No person who has been convicted of any crime involving moral turpitude shall be issued a license, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules and regulations of the commission made pursuant thereto, or who has failed to pay to the commission any or all sums required under the provisions of this chapter. The license shall specify the number of days the race meet shall continue and the number of races per day, which shall include not less than six nor more than eleven live races per day, and for which a fee shall be paid daily in advance of five hundred dollars for each live race day for those licensees which had gross receipts from parimutuel machines in excess of fifty million dollars in the previous year and two hundred dollars for each day for meets which had gross receipts from parimutuel machines at or below fifty million dollars in the previous year; in addition any newly authorized live race meets shall pay two hundred dollars per day for the first year: PROVIDED, That if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee for the meet, or for a portion which cannot be held may be refunded the licensee, if the commission deems the reasons for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this chapter, or any of the rules or regulations of the commission made pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation. [1997 c 87 § 2; 1985 c 146 § 3; 1982 c 32 § 2; 1973 1st ex.s. c 39 § 1; 1933 c 55 § 6; RRS § 8312-6.]

Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87: See notes following RCW 67.16.200.

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance. (1) It shall be unlawful:

(a) To conduct pool selling, bookmaking, or to circulate hand books; or

(b) To bet or wager on any horse race other than by the parimutuel method; or

(c) For any licensee to take more than the percentage provided in RCW 67.16.170 and 67.16.175; or

(d) For any licensee to compute breaks in the parimutuel system otherwise than at ten cents.

(2) Any willful violation of the terms of this chapter, or of any rule, regulation, or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final.

(3) The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who willfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the commission.

(4) Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a public nuisance. [1991 c 270 § 3; 1985 c 146 § 4; 1979 c 31 § 1; 1933 c 55 § 7; RRS § 8312-7.]

Severability—1985 c 146: See note following RCW 67.16.010.

Gambling: Chapters 9.46 and 9.47 RCW.

67.16.070 Races for local breeders. For the purpose of encouraging the breeding, within this state, of valuable thoroughbred, quarter and/or standard bred race horses, at least one race of each day's meet shall consist exclusively of Washington bred horses. [1949 c 236 § 2; 1933 c 55 § 8; Rem. Supp. 1949 § 8312-8.]

67.16.075 Breeder's awards and owner's bonuses—Eligibility—Certification. Only breeders or owners of Washington-bred horses are eligible to demand and receive a breeder's award, an owner's bonus or both. The commission shall promulgate rules and regulations to certify Washington-bred horses. In setting standards to certify horses as Washington-bred, the commission shall seek the advice of and consult with industry, including (1) the Washington Horse Breeders' Association, for thoroughbreds; (2) the Washington State Standardbred Association, for standardbred harness horses; (3) the Northern Racing Quarter Horse Association, for quarter horses; (4) the Washington State Appaloosa Racing Association, for appaloosas; and (5) the Washington State Arabian Horse Racing Association, for arabian horses. [1985 c 146 § 13.]

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.080 Horses to be registered. A quarter horse to be eligible for a race meet herein shall be duly registered with the American Quarter Horse Association. An appaloosa horse to be eligible for a race meet herein shall be duly registered with the National Appaloosa Horse Club or any successor thereto. An arabian horse to be eligible for a race meet herein shall be duly registered with the Arabian Horse Registry of America, or any successor thereto. [1982 c 132

§ 2; 1969 c 22 § 2; 1949 c 236 § 3; Rem. Supp. 1949 § 8312-13.]

Severability—1982 c 132: See note following RCW 67.16.010.

67.16.090 Races not limited to horses of same breed. In any race meet in which quarter horses, thoroughbred horses, appaloosa horses, standard bred harness horses, paint horses, or arabian horses participate horses of different breeds may be allowed to compete in the same race if such mixed races are so designated in the racing conditions. [1985 c 146 § 5; 1982 c 132 § 3; 1969 c 22 § 3; 1949 c 236 § 4; Rem. Supp. 1949 § 8312-14.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 132: See note following RCW 67.16.010.

67.16.095 Sums paid to commission—Disposition—Retainage. (Contingent effective date.) (1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102 and 67.16.105(3), shall be disposed of by the commission as follows:

(a) Fifty percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

(b) One percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund.

(c) Three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the state trade fair fund created in RCW 43.31.805.

(d) Forty-six percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the fair fund created in RCW 15.76.115.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the general fund. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1998 c 345 § 10.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

67.16.100 Disposition of fees—"Fair fund." (1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102 and 67.16.105(3), shall be disposed of by the commission as follows: One hundred percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and

be placed in the fair fund created in RCW 15.76.115. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1998 c 345 § 5; 1995 c 399 § 166; 1991 c 270 § 4. Prior: 1985 c 466 § 67; 1985 c 146 § 6; 1980 c 16 § 1; prior: 1979 c 151 § 169; 1979 c 31 § 2; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

Reviser's note—Sunset Act application: Parimutuel taxes and redistributions are subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.395. RCW 67.16.100, 67.16.105, and 67.16.170 are scheduled for future repeal under RCW 43.131.396.

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Severability—1985 c 146: See note following RCW 67.16.010.

State international trade fairs: RCW 43.31.800 through 43.31.850.

Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.832 through 43.31.834.

67.16.101 Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support small race courses. The legislature finds that:

(1) A primary responsibility of the horse racing commission is the encouragement of the training and development of the equine industry in the state of Washington whether the result of this training and development results in legalized horse racing or in the recreational use of horses;

(2) The horse racing commission has a further major responsibility to assure that any facility used as a race course should be maintained and upgraded to insure the continued safety of both the public and the horse at any time the facility is used for the training or contesting of these animals;

(3) Small race courses within the state have difficulty in obtaining sufficient funds to provide the maintenance and upgrading necessary to assure this safety at these facilities, or to permit frequent use of these facilities by 4-H children or other horse owners involved in training; and

(4) The one percent of the parimutuel machine gross receipts used to pay a special purse to the licensed owners of Washington bred horses is available for the purpose of drawing interest, thereby obtaining sufficient funds to be disbursed to achieve the necessary support to these small race courses. [1977 ex.s. c 372 § 1.]

Severability—1977 ex.s. c 372: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 372 § 3.]

67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks. (1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at

the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: PROVIDED, That nothing in this section shall apply to race meets which are nonprofit in nature, are of ten days or less, and have an average daily handle of less than one hundred twenty thousand dollars: PROVIDED, That the additional one percent of the gross receipts of all parimutuel machines at each race meet and the amount retained by the commission as specified in *RCW 67.16.100(1)(a) shall be deposited daily in a time deposit by the commission and the interest derived therefrom shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less: PROVIDED, That prior to receiving a payment under this section any new race course shall meet the qualifications set forth in this section for a period of two years: PROVIDED, FURTHER, That said distributed funds shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets. The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(2) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of five years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section. [1991 c 270 § 5; 1982 c 132 § 5; 1979 c 31 § 3; 1977 ex.s. c 372 § 2; 1969 ex.s. c 233 § 3.]

***Reviser's note:** RCW 67.16.100 was amended by 1998 c 345 § 5, changing subsection (1)(a) to subsection (1).

Severability—1982 c 132: See note following RCW 67.16.010.

Severability—1977 ex.s. c 372: See note following RCW 67.16.101.

67.16.105 Gross receipts—Commission's percentage—Distributions. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less shall be exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.30 percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily 0.52 percent of the daily gross receipts.

(3) In addition to those amounts in subsection (2) of this section, a licensee shall forward one-tenth of one percent of

the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment. The commission shall transfer funds generated under subsection (2) of this section equal to the difference between funds collected under this subsection (3) in a calendar year and three hundred thousand dollars, and distribute that amount under this subsection (3).

(4) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission shall calculate the mathematical average daily gross receipts of parimutuel wagering that is conducted only at the physical location of the live race meet at those race meets of licensees with gross receipts of all their in-state parimutuel machines of more than fifty million dollars. Such calculation shall include only the gross parimutuel receipts from wagering occurring on live racing dates, including live racing receipts and receipts derived from one simulcast race card that is conducted only at the physical location of the live racing meet, which, for the purposes of this subsection, is "the handle." If the calculation exceeds eight hundred eighty-six thousand dollars, the licensee shall within ten days of receipt of written notification by the commission forward to the commission a sum equal to the product obtained by multiplying 0.6 percent by the handle. Sums collected by the commission under this subsection shall be forwarded on the next business day following receipt thereof to the state treasurer to be deposited in the fair fund created in RCW 15.76.115. [1998 c 345 § 6; 1997 c 87 § 3; 1995 c 173 § 2; 1994 c 159 § 2; 1993 c 170 § 2; 1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

Sunset Act application: See note following RCW 67.16.100.

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87: See notes following RCW 67.16.200.

Intent—1995 c 173: "It is the intent of the legislature that one-half of the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington." [1995 c 173 § 1.]

Effective date—1995 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 173 § 3.]

Intent—1994 c 159: "It is the intent of the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of nonprofit race meets from March 30, 1994, until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington." [1994 c 159 § 1.]

Effective date—1994 c 159: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 159 § 4.]

Intent—1993 c 170: "It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation." [1993 c 170 § 1.]

Effective date—1993 c 170: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 170 § 3.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.106 Gross receipts—Commission's percentage—Nonprofit race meets. (Contingent effective date.)

(1) Licensees of race meets that are nonprofit in nature and are of ten days or less shall withhold and pay to the commission daily for each authorized day of parimutuel wagering one-half percent of the gross receipts of its parimutuel machines at each race meet.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee shall withhold and pay to the commission daily two and one-half percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily one percent of the daily gross receipts.

(3) In addition to those amounts in subsections (1) and (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment. [1998 c 345 § 11.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

67.16.110 Broadcasting and motion picture rights reserved. All radio broadcasting rights, and motion picture rights in connection with meets licensed hereunder are reserved to the state and the commission shall lease or license same only to the highest bidder. The exercise of such rights shall at all times be under the supervision of the commission. [1980 c 32 § 10; 1933 c 55 § 11; RRS § 8312-11.]

67.16.130 Nonprofit race meets—Licensing—Fees.

(1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, at a daily licensing fee of ten dollars, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: PROVIDED, That the commission may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of ten days or less, and which has an average daily handle of one hundred twenty thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

(3) As a condition to the reduction in fees as provided for in subsection (1) of this section, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet. [1991 c 270 § 7; 1985 c 146 § 8; 1982 c 32 § 4; 1979 c 31 § 4; 1969 ex.s. c 94 § 2.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

Effective date—1969 ex.s. c 94: "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1969." [1969 ex.s. c 94 § 3.]

67.16.140 Employees of commission—Employment restriction. No employee of the horse racing commission shall serve as an employee of any track at which that individual will also serve as an employee of the commission. [1973 1st ex.s. c 216 § 3.]

67.16.150 Employees of commission—Commissioners—Financial interest restrictions. No employee nor any commissioner of the horse racing commission shall have any financial interest whatsoever, other than an ownership interest in a community venture, in any track at which said employee serves as an agent or employee of the commission or at any track with respect to a commissioner. [1973 1st ex.s. c 216 § 4.]

67.16.160 Rules implementing conflict of interest laws. No later than ninety days after July 16, 1973 the horse racing commission shall promulgate, pursuant to chapter 34.05 RCW, reasonable rules implementing to the extent applicable to the circumstances of the horse racing commission the conflict of interest laws of the state of Washington as set forth in chapters *42.21 and 42.52 RCW. [1994 c 154 § 314; 1973 1st ex.s. c 216 § 5.]

***Reviser's note:** Chapter 42.21 RCW was repealed by 1994 c 154 § 304, effective January 1, 1995; for later enactment, see chapter 42.52 RCW.

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905

67.16.170 Gross receipts—Retention of percentage by licensees. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less may retain daily for each authorized day of racing fifteen percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section may retain daily for each authorized day of parimutuel wagering the following percentages from the daily gross receipts of all its in-state parimutuel machines:

(a) If the daily gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee may retain daily 13.70 percent of the daily gross receipts; and

(b) If the daily gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee may retain daily 14.48 percent of the daily gross receipts. [1998 c 345 § 7; 1991 c 270 § 8; 1987 c 347 § 2; 1985 c 146 § 9; 1983 c 228 § 1; 1979 c 31 § 5.]

Sunset Act application: See note following RCW 67.16.100.

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.171 Gross receipts—Retention of percentage by licensees. (Contingent effective date.) (1) Licensees of race meets that are nonprofit in nature and are of ten days or less may retain daily for each authorized day of racing fourteen and one-half percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section may retain daily for each authorized day of parimutuel wagering the following percentages from the daily gross receipts of all its in-state parimutuel machines:

(a) If the daily gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee may retain daily twelve and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee may retain daily fourteen percent of the daily gross receipts. [1998 c 345 § 12.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

67.16.175 Exotic wagers—Retention of percentage by race meets. (1) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.

(2) Of the amounts retained in subsection (1) of this section, one-sixth shall be used for Washington-bred breeder awards.

(3) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital

construction of the new licensee's new race track for a period of five years.

(4) As used in this section, "exotic wagers" means any multiple wager. Exotic wagers are subject to approval of the commission. [1991 c 270 § 9. Prior: 1987 c 453 § 1; 1987 c 347 § 3; 1986 c 43 § 1; 1985 c 146 § 10; 1981 c 135 § 1.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1981 c 135: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 135 § 2.]

67.16.200 Satellite locations—Parimutuel wagering—Simulcasts—Common pools—Conduct. (1) A racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering on its program at a satellite location or locations within the state of Washington. The sale of parimutuel pools at satellite locations shall be conducted only during the licensee's race meet and simultaneous to all parimutuel wagering activity conducted at the licensee's live racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location. A satellite location shall not be operated within twenty driving miles of any class 1 racing facility. For the purposes of this section, "driving miles" means miles measured by the most direct route as determined by the commission; and

(b) A licensee shall not conduct satellite wagering at any satellite location within sixty driving miles of any other racing facility conducting a live race meet.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.170, and 67.16.175. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility.

(4) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to locations outside of the state of Washington approved by the commission and in accordance with the interstate horse racing act of 1978 (15 U.S.C. Sec. 3001 to 3007) or any other applicable laws. The commission may permit parimutuel pools on the simulcast races to be combined in a common pool. A racing association that transmits simulcasts of its races to locations outside this state shall pay at least fifty percent of the fee that it receives for sale of the simulcast signal to the horsemen's purse account for its live races after first deducting the actual cost of sending the signal out of state.

(5) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to licensed racing associations located within the state of Washington and approved by the commission for the receipt of the simulcasts. The commission shall permit parimutuel pools on the simulcast races to be combined in a common pool. The fee for in-state, track-to-track simulcasts shall be five and one-half percent of the gross parimutuel receipts generated at the receiving location and payable to the sending racing association. A racing association that transmits simulcasts of its races to other licensed racing associations shall pay at least fifty percent of the fee that it receives for the simulcast signal to the horsemen's purse account for its live race meet after first deducting the actual cost of sending the simulcast signal. A racing association that receives races simulcast from class 1 racing associations within the state shall pay at least fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price and the actual direct costs of importing the race.

(6) A class 1 racing association may be allowed to import simulcasts of horse races from out-of-state racing facilities. With the prior approval of the commission, the class 1 racing association may participate in an interstate common pool and may change its commission and breakage rates to achieve a common rate with other participants in the common pool.

(a) The class 1 racing association shall make written application with the commission for permission to import simulcast horse races for the purpose of parimutuel wagering. Subject to the terms of this section, the commission is the sole authority in determining whether to grant approval for an imported simulcast race.

(b) During the conduct of its race meeting, a class 1 racing association may be allowed to import no more than one simulcast race card program during each live race day. A licensed racing association may also be approved to import one simulcast race of regional or national interest on each live race day. A class 1 racing association may be permitted to import two simulcast programs on two nonlive race days per each week during its live meet. A licensee shall not operate parimutuel wagering on more than five days per week. Parimutuel wagering on imported simulcast programs shall only be conducted at the live racing facility of a class 1 racing association.

(c) The commission may allow simulcast races of regional or national interest to be sent to satellite locations. The simulcasts shall be limited to one per day except for Breeder's Cup special events day.

(d) When open for parimutuel wagering, a class 1 racing association which imports simulcast races shall also conduct simulcast parimutuel wagering within its licensed racing enclosure on all races simulcast from other class 1 racing associations within the state of Washington.

(e) When not conducting a live race meeting, a class 1 racing association may be approved to conduct simulcast parimutuel wagering on imported simulcast races. The conduct of simulcast parimutuel wagering on the simulcast races shall be for not more than twelve hours during any twenty-four hour period, for not more than five days per week and only at its live racing facility.

(f) On any imported simulcast race, the class 1 racing association shall pay fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price of the imported race and the actual costs of importing the race.

(7) For purposes of this section, a class 1 racing association is defined as a licensee approved by the commission which conducts during each twelve-month period at least forty days of live racing within four successive calendar months. The commission may by rule increase the number of live racing days required to maintain class 1 racing association status.

(8) This section does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this section does not allow gaming of any nature or scope that was prohibited before April 19, 1997. This section is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of this section is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. Therefore, imported simulcast race card programs shall not be disseminated to any location outside the live racing facility of the class 1 racing association and a class 1 racing association is strictly prohibited from simulcasting imported race card programs to any location outside its live racing facility. [1997 c 87 § 4; 1991 c 270 § 10; 1987 c 347 § 1.]

Findings—Purpose—1997 c 87: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this act does not allow gaming of any nature or scope that was prohibited before April 19, 1997." [1997 c 87 § 1.]

Report by joint legislative audit and review committee—1997 c 87: "(1) The joint legislative audit and review committee shall conduct an evaluation to determine the extent to which this act has achieved the following outcomes:

(a) The extent to which purses at Emerald Downs, Playfair, and Yakima Meadows have increased as a result of the provisions of this act;

(b) The extent to which attendance at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;

(c) The extent to which the breeding of horses in this state has increased specifically related to the provisions of this act;

(d) The extent to which the number of horses running at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;

(e) The extent to which nonprofit racetracks in this state have benefited from this act including the removal of the cap on the nonprofit race meet purse fund; and

(f) The extent to which Emerald Downs, Playfair, and Yakima Meadows are capable of remaining economically viable given the provisions of this act and the increase in competition for gambling or entertainment dollars.

(2) The joint legislative audit and review committee may provide recommendations to the legislature concerning modifications that could be made to existing state laws to improve the ability of this act to meet the above intended goals.

(3) The joint legislative audit and review committee shall complete a report on its finding by June 30, 2000. The report shall be provided to the appropriate committees of the legislature by December 1, 2000." [1997 c 87 § 5.]

Severability—1997 c 87: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 87 § 7.]

Effective date—1997 c 87: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 87 § 8.]

67.16.230 Satellite locations—Fees. The commission is authorized to establish and collect an annual fee for each separate satellite location. The fee to be collected from the licensee shall be set to reflect the commission's expected costs of approving, regulating, and monitoring each satellite location, provided commission revenues generated under RCW 67.16.105 from the licensee shall be credited annually towards the licensee's fee assessment under this section. [1991 c 270 § 11; 1987 c 347 § 7.]

67.16.300 Industrial insurance premium assessments. In addition to the license fees authorized by this chapter, the commission shall collect the industrial insurance premium assessments required under RCW 51.16.210 from trainers, grooms, and owners. The industrial insurance premium assessments required under RCW 51.16.210 shall be retroactive to January 1, 1989, and shall be collected from all licensees whose licenses were issued after that date. The commission shall deposit the industrial insurance premium assessments in the industrial insurance trust fund as required by rules adopted by the department of labor and industries. [1989 c 385 § 2.]

67.16.900 Severability—General repealer—1933 c 55. In case any part or portion of this chapter shall be held unconstitutional, such holding shall not affect the validity of this chapter as a whole or any other part or portion of this chapter not adjudged unconstitutional. All acts in conflict herewith are hereby repealed. [1933 c 55 § 10; RRS § 8312-10.]

Chapter 67.18

WASHINGTON STATE HORSE PARK

Sections	
67.18.005	Findings—Purpose.
67.18.010	Definitions.
67.18.020	Park established—Site approval—Ownership of land—Development, promotion, operation, management, and maintenance.
67.18.030	Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.
67.18.040	Washington state horse park authority—Powers.

- 67.18.050 Collaboration by authority and state on projects of shared interest—Cooperation with groups for youth recreational activities.
- 67.18.900 Severability—1995 c 200.

67.18.005 Findings—Purpose. The legislature finds that:

(1) Horses are part of a large, highly diverse, and vital industry which provides significant economic, employment, recreational, and educational contributions to residents of and visitors to the state of Washington;

(2) Currently there is no adequate facility in the Pacific Northwest with the acreage, services, and capacity to host large regional horse shows, national championships, or Olympics-quality events to showcase and promote this important Washington industry;

(3) Establishing a first-class horse park facility in Washington would meet important needs of the state's horse industry, attract investment, enhance recreational opportunities, and bring new exhibitors and tourists to the state from throughout the region and beyond; and

(4) A unique opportunity exists to form a partnership between state, county, and private interests to create a major horse park facility that will provide public recreational opportunities and state-wide economic and employment benefits.

It is the purpose of this legislation to create the framework for such a partnership to facilitate development of the Washington state horse park. It is further the intent of the legislature that the state horse park shall be developed in stages, based on factors such as the availability of funds, equipment, and other materials donated by private sources; the availability and willingness of volunteers to work on park development; and the availability of revenues generated by the state horse park as it is developed and utilized. [1995 c 200 § 1.]

67.18.010 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Authority" means the Washington state horse park authority authorized to be created in RCW 67.18.030.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Horses" includes all domesticated members of the taxonomic family Equidae, including but not limited to horses, donkeys, and mules.

(4) "State horse park" means the Washington state horse park established in RCW 67.18.020. [1995 c 200 § 2.]

67.18.020 Park established—Site approval—Ownership of land—Development, promotion, operation, management, and maintenance. (1) The Washington state horse park is hereby established, to be located at a site approved by the commission. In approving a site for the state horse park, the commission shall consider areas with large blocks of land suitable for park development, the distance to various population centers in the state, the ease of transportation to the site for large vehicles traveling along either a north-south or an east-west corridor, and other factors deemed important by the commission.

(2) Ownership of land for the state horse park shall be as follows:

(a) The commission is vested with and shall retain ownership of land provided by the state for the state horse park. Any lands acquired by the commission after July 23, 1995, for the state horse park shall be purchased under chapter 43.98A RCW. The legislature encourages the commission to provide a long-term lease of the selected property to the Washington state horse park authority at a minimal charge. The lease shall contain provisions ensuring public access to and use of the horse park facilities, and generally maximizing public recreation opportunities at the horse park, provided that the facility remains available primarily for horse-related activities.

(b) Land provided for the state horse park by the county in which the park is located shall remain in the ownership of that county unless the county determines otherwise. The legislature encourages the county to provide a long-term lease of selected property to the Washington state horse park authority at a minimal charge.

(c) If the authority acquires additional lands through donations, grants, or other means, or with funds generated from the operation of the state horse park, the authority shall retain ownership of those lands. The authority shall also retain ownership of horse park site improvements paid for by or through donations or gifts to the authority.

(3) Development, promotion, operation, management, and maintenance of the state horse park is the responsibility of the authority created in RCW 67.18.030. [1995 c 200 § 3.]

67.18.030 Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.

(1) A nonprofit corporation may be formed under the nonprofit corporation provisions of chapter 24.03 RCW to carry out the purposes of this chapter. Except as provided in RCW 67.18.040, the corporation shall have all the powers and be subject to the same restrictions as are permitted or prescribed to nonprofit corporations and shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The nonprofit corporation shall be known as the Washington state horse park authority. The articles of incorporation shall provide that it is the responsibility of the authority to develop, promote, operate, manage, and maintain the Washington state horse park. The articles of incorporation shall provide for appointment of directors and other conduct of business consistent with the requirements of this chapter.

(2)(a) The articles of incorporation shall provide for a seven-member board of directors for the authority, all appointed by the governor. Board members shall serve three-year terms, except that two of the original appointees shall serve one-year terms, and two of the original appointees shall serve two-year terms. A board member may serve consecutive terms.

(b) The articles of incorporation shall provide that the governor appoint board members as follows:

(i) One board member shall represent the interests of the commission. In making this appointment, the governor shall solicit recommendations from the commission;

(ii) One board member shall represent the interests of the county in which the park is located. In making this appointment, the governor shall solicit recommendations from the county legislative authority; and

(iii) Five board members shall represent the geographic and sports discipline diversity of equestrian interests in the state, and at least one of these members shall have business experience relevant to the organization of horse shows or operation of a horse show facility. In making these appointments, the governor shall solicit recommendations from a variety of active horse-related organizations in the state.

(3) The articles of incorporation shall include a policy that provides for the preferential use of a specific area of the horse park facilities at nominal cost for horse groups associated with youth groups and the disabled.

(4) The governor shall make appointments to fill board vacancies for positions authorized under subsection (2) of this section, upon additional solicitation of recommendations from the board of directors.

(5) The board of directors shall perform their duties in the best interests of the authority, consistent with the standards applicable to directors of nonprofit corporations under RCW 24.03.127. [1995 c 200 § 4.]

67.18.040 Washington state horse park authority—

Powers. To meet its responsibility for developing, promoting, operating, managing, and maintaining the state horse park, the authority is empowered to do the following:

(1) Exercise the general powers authorized for any nonprofit corporation as specified in RCW 24.03.035. All debts of the authority shall be in the name of the authority and shall not be debts of the state of Washington for which the state or any state agency shall have any obligation to pay; and the authority may not issue bonds. Neither the full faith and credit of the state nor the state's taxing power is pledged for any indebtedness of the authority;

(2) Employ and discharge at its discretion employees, agents, advisors, and other personnel;

(3) Apply for or solicit, accept, administer, and dispose of grants, gifts, and bequests of money, services, securities, real estate, or other property. However, if the authority accepts a donation designated for a specific purpose, the authority shall use the donation for the designated purpose;

(4) Establish, revise, collect, manage, and expend such fees and charges at the state horse park as the authority deems necessary to accomplish its responsibilities;

(5) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority and the state horse park;

(6) Authorize use of the state horse park facilities by the general public and by and for compatible nonequestrian events as the authority deems reasonable, so long as the primacy of the center for horse-related purposes is not compromised;

(7) Insure its obligations and potential liability;

(8) Enter into cooperative agreements with and provide for private nonprofit groups to use the state horse park facilities and property to raise money to contribute gifts, grants, and support to the authority for the purposes of this chapter;

(9) Grant concessions or leases at the state horse park upon such terms and conditions as the authority deems appropriate, but in no event shall the term of a concession or lease exceed twenty-five years. Concessions and leases shall be consistent with the purposes of this chapter and may be renegotiated at least every five years; and

(10) Generally undertake any and all lawful acts necessary or appropriate to carry out the purposes for which the authority and the state horse park are created. [1995 c 200 § 5.]

67.18.050 Collaboration by authority and state on projects of shared interest—Cooperation with groups for youth recreational activities.

(1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.

(2) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and the disabled at nominal cost. [1995 c 200 § 6.]

67.18.900 Severability—1995 c 200. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 200 § 8.]

Chapter 67.20

PARKS, BATHING BEACHES, PUBLIC CAMPS

Sections

- 67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.
- 67.20.015 Authority to establish and operate public camps—Charges.
- 67.20.020 Contracts for cooperation.
- 67.20.030 Scope of chapter.

County parks and recreational facilities: Chapter 36.68 RCW.

Eminent domain: Title 8 RCW.

Metropolitan park districts: Chapter 35.61 RCW.

Recreation districts act for counties: Chapter 36.69 RCW.

State parks and recreation commission: Chapter 43.51 RCW.

67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain. Any city in this state acting through its city council, or its board

of park commissioners when authorized by charter or ordinance, any separately organized park district acting through its board of park commissioners or other governing officers, any school district acting through its board of school directors, any county acting through its board of county commissioners, any park and recreation service area acting through its governing body, and any town acting through its town council shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city, park district, school district or town or any number of such public organizations to acquire any land within this state for park, playground, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beach or public camp purposes and roads leading from said parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, or public camps to nearby highways by donation, purchase or condemnation, and to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, roads and public camps upon any such land, including the power to enact and enforce such police regulations not inconsistent with the constitution and laws of the state of Washington, as are deemed necessary for the government and control of the same. The power of eminent domain herein granted shall not extend to any land outside the territorial limits of the governmental unit or units exercising said power. [1988 c 82 § 7; 1949 c 97 § 1; 1921 c 107 § 1; Rem. Supp. 1949 § 9319. FORMER PART OF SECTION: 1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321 now codified as RCW 67.20.015.]

67.20.015 Authority to establish and operate public camps—Charges. Any city, town, county, separately organized park district, or school district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp, or camps anywhere within the state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321. Formerly RCW 67.20.010, part.]

67.20.020 Contracts for cooperation. Any city, park district, school district, county or town shall have power to enter into any contract in writing with any organization or organizations referred to in this chapter for the purpose of conducting a recreation program or exercising any other power granted by this chapter. In the conduct of such recreation program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1949 c 97 § 2; 1921 c 107 § 2; Rem. Supp. 1949 § 9320.]

67.20.030 Scope of chapter. This chapter shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [1949 c 97 § 4; 1921 c 107 § 4; Rem. Supp. 1949 § 9319 note.]

Chapter 67.24

FRAUD IN SPORTING CONTEST

Sections

- 67.24.010 Commission of—Felony.
- 67.24.020 Scope of 1945 c 107.

67.24.010 Commission of—Felony. Every person who shall give, offer, receive, or promise, directly or indirectly, any compensation, gratuity, or reward, or make any promise thereof, or who shall fraudulently commit any act by trick, device, or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between people or between animals, shall be guilty of a felony and shall be punished by imprisonment in a state correctional facility for not less than five years. [1992 c 7 § 43; 1945 c 107 § 1; 1941 c 181 § 1; Rem. Supp. 1945 § 2499-1.]

67.24.020 Scope of 1945 c 107. All of the acts and statutes in conflict herewith are hereby repealed except chapter 55, Laws of 1933 [chapters 43.50 and 67.16 RCW] and amendments thereto. [1945 c 107 § 2; Rem. Supp. 1945 § 2499-1 note.]

Chapter 67.28

PUBLIC STADIUM, CONVENTION, ARTS, AND TOURISM FACILITIES

Sections

- 67.28.080 Definitions.
- 67.28.120 Authorization to acquire and operate tourism-related facilities.
- 67.28.125 Selling convention center facilities—Smaller counties within national scenic areas.
- 67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.
- 67.28.140 Declaration of public purpose—Right of eminent domain.
- 67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment.
- 67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.
- 67.28.170 Power to lease all or part of facilities—Disposition of proceeds.
- 67.28.180 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
- 67.28.1801 Credit against sales tax due on same lodging.
- 67.28.181 Special excise taxes authorized—Rates—Credits for city or town tax by county—Limits.
- 67.28.1815 Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation.
- 67.28.1817 Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments.
- 67.28.183 Exemption from tax—Emergency lodging for homeless persons—Conditions.
- 67.28.184 Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited.
- 67.28.200 Special excise tax authorized—Exemptions may be established—Collection.
- 67.28.220 Powers additional and supplemental to other laws.
- 67.28.350 Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes.
- 67.28.8001 Reports by municipalities—Summary and analysis by department of community, trade, and economic development.
- 67.28.900 Severability—1965 c 15.

- 67.28.910 Severability—1967 c 236.
 67.28.911 Severability—1973 2nd ex.s. c 34.
 67.28.912 Severability—1975 1st ex.s. c 225.
 67.28.913 Severability—1988 ex.s. c 1.

Multipurpose community centers: Chapter 35.59 RCW.

Stadiums, coliseums, powers of counties to build and operate: RCW 36.68.090.

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

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture. [1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

Intent—1997 c 452: "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

Severability—1997 c 452: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 452 § 24.]

Savings—1997 c 452: See note following RCW 67.28.181.

Effective date, application—1991 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect after immediately [effect immediately (May 21, 1991)]. This act applies retroactively to all actions taken under chapter 67.28 RCW on or after January 1, 1990." [1991 c 357 § 5.]

67.28.120 Authorization to acquire and operate tourism-related facilities. Any municipality is authorized either individually or jointly with any other municipality, or

person, or any combination thereof, to acquire and to operate tourism-related facilities, whether located within or without such municipality. [1997 c 452 § 7; 1979 ex.s. c 222 § 1; 1973 2nd ex.s. c 34 § 1; 1967 c 236 § 5.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.125 Selling convention center facilities—Smaller counties within national scenic areas. The provisions of this section shall apply to any municipality in any county located in whole or in part in a national scenic area when the population of the county is less than 20,000. The provisions of this section shall also apply to the county when the county contains in whole or in part a national scenic area and the population of the county is less than 20,000.

(1) The legislative body of any municipality or the county legislative authority is authorized to sell to any public or private person, including a corporation, partnership, joint venture, or any other business entity, any convention center facility it owns in whole or in part.

(2) The price and other terms and conditions shall be as the legislative body or authority shall determine. [1991 c 357 § 2.]

Effective date, application—1991 c 357: See note following RCW 67.28.080.

67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities. Any municipality, taxing district, or municipal corporation is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of tourism-related facilities or to provide for the joint use of such lands, properties or facilities, or to participate in the financing of all or any part of the public facilities on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to the voters of such municipalities, unless the provisions of general law applicable to the incurring of municipal indebtedness shall require such submission. [1997 c 452 § 8; 1979 ex.s. c 222 § 2; 1973 2nd ex.s. c 34 § 2; 1967 c 236 § 6.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.140 Declaration of public purpose—Right of eminent domain. The acts authorized herein are declared to be strictly for the public purposes of the municipalities authorized to perform same. Any municipality as defined in RCW 67.28.080 shall have the power to acquire by condemnation and purchase any lands and property rights, both within and without its boundaries, which are necessary to carry out the purposes of this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law or under chapter 8.12 RCW. [1967 c 236 § 7.]

67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment. To carry out the purposes

es of this chapter any municipality shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the laws of this state. Such general obligation bonds shall be authorized, executed, issued and made payable as other general obligation bonds of such municipality: PROVIDED, That the governing body of such municipality may provide that such bonds mature in not to exceed forty years from the date of their issue, may provide that such bonds also be made payable from any special taxes provided for in this chapter, and may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any properties. [1997 c 452 § 9; 1984 c 186 § 56; 1967 c 236 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Purpose—1984 c 186: See note following RCW 39.46.110.

67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions. (1) To carry out the purposes of this chapter the legislative body of any municipality shall have the power to issue revenue bonds without submitting the matter to the voters of the municipality: PROVIDED, That the legislative body shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the legislative body may obligate the municipality to pay all or part of amounts collected from the special taxes provided for in this chapter, and/or to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, added to, repaired or replaced pursuant to this chapter, as the legislative body shall determine: PROVIDED, FURTHER, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund.

Such revenue bonds and the interest thereon issued against such fund or funds shall constitute a claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the legislative body shall deem proper; shall be payable at such time or times and at such places as shall be determined by the legislative body; shall be executed in such manner and bear interest at such rate or rates as shall be determined by the legislative body.

Such revenue bonds shall be sold in such manner as the legislative body shall deem to be for the best interests of the municipality, either at public or private sale.

The legislative body may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guaranty

the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guaranty the payment of such principal and interest, to pledge and apply thereto part or all of any lawfully authorized special taxes provided for in this chapter, to maintain rates, charges or rentals sufficient with other available moneys to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners, to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the legislative body may deem necessary to accomplish the most advantageous sale of such bonds. The legislative body may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The legislative body may include in the principal amount of any such revenue bond issue an amount for engineering, architectural, planning, financial, legal, and other services and charges incident to the acquisition or construction of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities, an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any facilities to be financed from the proceeds of such issue plus six months. The legislative body may, if it deems it in the best interest of the municipality, provide in any contract for the construction or acquisition of any facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds.

If the municipality shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the municipality and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1997 c 452 § 10; 1983 c 167 § 168; 1979 ex.s. c 222 § 3; 1973 2nd ex.s. c 34 § 3; 1967 c 236 § 9.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.28.170 Power to lease all or part of facilities—Disposition of proceeds. The legislative body of any municipality owning or operating tourism-related facilities acquired under this chapter shall have power to lease to any municipality or person, or to contract for the use or operation by any municipality or person, of all or any part of the facilities authorized by this chapter, including but not limited to parking facilities, concession facilities of all kinds and any property or property rights appurtenant to such tourism-related facilities, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership and/or operation of such facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality

issued for authorized tourism-related facilities purposes. [1997 c 452 § 11; 1979 ex.s. c 222 § 4; 1973 2nd ex.s. c 34 § 4; 1967 c 236 § 10.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.180 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.

(1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: PROVIDED, That it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (ii) in any county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other

purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or (iii) in other counties, for county-owned facilities for agricultural promotion. A county is exempt under this subsection in respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt.

(ii) If bonds have been issued under RCW 43.99N.020 and any necessary property transfers have been made under RCW 36.102.100, no city within a county with a population of one million or more may levy the tax authorized by this section before January 1, 2021.

(iii) However, in the event that any city in a county described in (i) or (ii) of this subsection (2)(c) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, or deposited in the stadium and exhibition center account under RCW 43.99N.060 after the debt on the stadium is retired.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(d) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(d) must be financially stable and have at least the following:

- (i) A legally constituted and working board of directors;
- (ii) A record of artistic, heritage, or cultural accomplishments;
- (iii) Been in existence and operating for at least two years;
- (iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;
- (v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and
- (vi) Evidence that there has been independent financial review of the organization.

(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(f) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(h) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(i) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(k) does not apply in respect to a public stadium under chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(l) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(l) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [1997 c 220 § 501 (Referendum Bill No. 48, approved June 17, 1997); 1995 1st sp.s. c 14 § 10; 1995 c 386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Effective date—1991 c 336: "This act shall take effect January 1, 1992." [1991 c 336 § 3.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1986 c 104: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986." [1986 c 104 § 2.]

Severability—1985 c 272: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 272 § 2.]

Contracts for marketing facility and services—Matching nonstate funds: RCW 67.40.120.

Special excise tax imposed in King county for state convention and trade center; RCW 67.40.090.

67.28.1801 Credit against sales tax due on same lodging. Tax collected under RCW 67.28.180 on a sale of lodging shall be credited against the amount of sales tax due to the state under chapter 82.08 RCW on the same sale of lodging. [1998 c 35 § 2.]

Validation of taxes imposed and collected and actions taken—Effective date—1998 c 35: See notes following RCW 67.28.181.

67.28.181 Special excise taxes authorized—Rates—Credits for city or town tax by county—Limits. (1) The legislative body of any municipality may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The rate of tax shall not exceed the lesser of two percent or a rate that, when combined with all other taxes imposed upon sales of lodging within the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals twelve percent. A tax under this chapter shall not be imposed in increments smaller than tenths of a percent.

(2) Notwithstanding subsection (1) of this section:

(a) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, such total authorization shall continue through January 1, 1999, and thereafter the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1999.

(b) If a city or town, other than a municipality imposing a tax under (a) of this subsection, is located in a county that imposed taxes under this chapter with a total rate of four percent or more on January 1, 1997, the city or town may not impose a tax under this section.

(c) If a city has a population of four hundred thousand or more and is located in a county with a population of one million or more, the rate of tax imposed under this chapter by the city shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging in the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals fifteen and two-tenths percent.

(d) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100, or both, at a rate equal to six percent before January 1, 1998, the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1998.

(3) Any county ordinance or resolution adopted under this section shall contain a provision allowing a credit against the county tax for the full amount of any city or town tax imposed under this section upon the same taxable event. [1998 c 35 § 1; 1997 c 452 § 3.]

Validation of taxes imposed and collected and actions taken—1998 c 35: "If a municipality was authorized to impose taxes under chapter 67.28 RCW or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, any taxes imposed and collected by the municipality on or after July 27, 1997, are validated by this act to the extent the taxes were imposed at rates that would be permitted under chapter 67.28 RCW as amended by this act. All actions taken in connection with the collection and administration of taxes validated under this section, including crediting the taxes against the amount of sales taxes due to the state under

chapter 82.08 RCW, are also validated by this act to the extent the actions taken would be permitted under chapter 67.28 RCW as amended by this act." [1998 c 35 § 4.]

Effective date—1998 c 35: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 1998]." [1998 c 35 § 5.]

Savings—1997 c 452: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections. As provided in RCW 1.12.020, the sections amended or repealed in this act are continued by section 3 of this act for purposes such as redemption payments on bonds issued in reliance on taxes imposed under those sections. Any moneys held in a fund created under a section repealed in this act shall be deposited in a fund created under section 4 of this act." [1997 c 452 § 23.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

67.28.1815 Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation. All revenue from taxes imposed under this chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities. Municipalities may, under chapter 39.34 RCW, agree to the utilization of revenue from taxes imposed under this chapter for the purposes of funding a multijurisdictional tourism-related facility. [1997 c 452 § 4.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.1817 Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments. (1) Before proposing imposition of a new tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter, a municipality with a population of five thousand or more shall establish a lodging tax advisory committee under this section. A lodging tax advisory committee shall consist of at least five members, appointed by the legislative body of the municipality, unless the municipality has a charter providing for a different appointment authority. The committee membership shall include: (a) At least two members who are representatives of businesses required to collect tax under this chapter; and (b) at least two members who are persons involved in activities authorized to be funded by revenue received under this chapter. Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection. Persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection. Organizations representing businesses required to collect tax under this chapter, organizations involved in activities authorized to be funded by revenue received under this chapter, and local agencies involved in tourism promotion may submit recommendations for membership on the committee. The number of members who are representatives of businesses required to collect tax under this chapter shall

equal the number of members who are involved in activities authorized to be funded by revenue received under this chapter. One member shall be an elected official of the municipality who shall serve as chair of the committee. An advisory committee for a county may include one nonvoting member who is an elected official of a city or town in the county. An advisory committee for a city or town may include one nonvoting member who is an elected official of the county in which the city or town is located. The appointing authority shall review the membership of the advisory committee annually and make changes as appropriate.

(2) Any municipality that proposes imposition of a tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The advisory committee shall submit comments on the proposal in a timely manner through generally applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815. Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the municipality from acting on the proposal. A municipality is not required to submit an amended proposal to an advisory committee under this section. [1998 c 35 § 3; 1997 c 452 § 5.]

Validation of taxes imposed and collected and actions taken—Effective date—1998 c 35: See notes following RCW 67.28.181.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.183 Exemption from tax—Emergency lodging for homeless persons—Conditions. (1) The taxes levied under this chapter shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1992 c 206 § 5; 1988 c 61 § 2.]

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective date—1988 c 61: See note following RCW 82.08.0299.

67.28.184 Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited. No city imposing the tax authorized under this chapter may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under this chapter to directly or indirectly acquire, construct,

operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 13; 1987 1st ex.s. c 8 § 7.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.28.200 Special excise tax authorized—Exemptions may be established—Collection. The legislative body of any municipality may establish reasonable exemptions for taxes authorized under this chapter. The department of revenue shall perform the collection of such taxes on behalf of such municipality at no cost to such municipality. [1997 c 452 § 14; 1993 c 389 § 2; 1991 c 331 § 2; 1988 ex.s. c 1 § 23; 1987 c 483 § 3; 1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.220 Powers additional and supplemental to other laws. The powers and authority conferred upon municipalities under the provisions of this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 236 § 15.]

67.28.350 Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes. See RCW 84.36.270 through 84.36.290.

67.28.8001 Reports by municipalities—Summary and analysis by department of community, trade, and economic development. (1) Each municipality imposing a tax under chapter 67.28 RCW shall submit a report to the department of community, trade, and economic development on October 1, 1998, and October 1, 2000. Each report shall include the following information:

(a) The rate of tax imposed under chapter 67.28 RCW;

(b) The total revenue received under chapter 67.28 RCW for each of the preceding six years;

(c) A list of projects and activities funded with revenue received under chapter 67.28 RCW; and

(d) The amount of revenue under chapter 67.28 RCW expended for each project and activity.

(2) The department of community, trade, and economic development shall summarize and analyze the data received under subsection (1) of this section in a report submitted to the legislature on January 1, 1999, and January 1, 2001. The report shall include, but not be limited to, analysis of factors contributing to growth in revenue received under chapter 67.28 RCW and the effects of projects and activities funded with revenue received under chapter 67.28 RCW on tourism growth. [1997 c 452 § 6.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.900 Severability—1965 c 15. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 15 § 8.]

67.28.910 Severability—1967 c 236. If any provision of this act, or its application to any municipality, person or circumstance is held invalid, the remainder of this act or the application of the provision to other municipalities, persons or circumstances is not affected. [1967 c 236 § 19.]

67.28.911 Severability—1973 2nd ex.s. c 34. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 34 § 7.]

67.28.912 Severability—1975 1st ex.s. c 225. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 225 § 3.]

67.28.913 Severability—1988 ex.s. c 1. See RCW 36.100.900.

Chapter 67.30

MULTIPURPOSE SPORTS STADIA

Sections

- 67.30.010 Declaration of public purpose and necessity.
- 67.30.020 Participation by cities and counties—Powers—Costs, how paid.
- 67.30.030 Issuance of revenue bonds—Limitations—Retirement.
- 67.30.040 Power to appropriate and raise moneys.
- 67.30.050 Powers additional and supplemental to other laws.
- 67.30.900 Severability—1967 c 166.

Multipurpose community centers: Chapter 35.59 RCW.

Professional sports franchise, cities authorized to own and operate: RCW 35.21.695.

Stadia, coliseums, powers of counties to build and operate: RCW 36.68.090.

67.30.010 Declaration of public purpose and necessity. The participation of counties and cities in multipurpose sports stadia which may be used for football, baseball, soccer, conventions, home shows or any and all similar activities; the purchase, lease, condemnation, or other acquisition of necessary real property therefor; the acquisition by condemnation or otherwise, lease, construction, improvement, maintenance, and equipping of buildings or other structures upon such real property or other real property; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to counties and cities, are hereby declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity, and such real property and other property acquired, constructed, improved, maintained, equipped, and used by counties and cities in the manner and for the purposes enumerated in this

chapter shall and are hereby declared to be acquired, constructed, improved, maintained, equipped and used for public, governmental, and municipal purposes and as a matter of public necessity. [1967 c 166 § 2.]

67.30.020 Participation by cities and counties—Powers—Costs, how paid. The counties and cities are authorized, upon passage of an ordinance in the prescribed manner, to participate in the financing, construction, acquisition, operation, and maintenance of multipurpose sports stadia within their boundaries. Counties and cities are also authorized, through their governing authorities, to purchase, lease, condemn, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, condemnation, construction, improvement, maintenance, equipping, investigations, planning, operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of revenue bonds as the governing authority may determine. [1967 c 166 § 3.]

67.30.030 Issuance of revenue bonds—Limitations—Retirement. Any revenue bonds to be issued by any county or city pursuant to the provisions of this chapter, shall be authorized and issued in the manner prescribed by the laws of this state for the issuance and authorization of bonds thereof for public purposes generally: PROVIDED, That the bonds shall not be issued for a period beyond the life of the improvement to be acquired by the use of the bonds.

The bonding authority authorized for the purposes of this chapter shall be limited to the issuance of revenue bonds payable from a special fund or funds created solely from revenues derived from the facility. The owners and holders of such bonds shall have a lien and charge against the gross revenue of the facility. Such revenue bonds and the interest thereon against such fund or funds shall be a valid claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality. The governing authority of any county or city may by ordinance take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof. The provisions of chapter 36.67 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any such revenue bonds. [1967 c 166 § 4.]

67.30.040 Power to appropriate and raise moneys. The governing body having power to appropriate moneys within any county or city for the purpose of purchasing, condemning, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such all-purpose or multipurpose sports stadium, is hereby authorized to appropriate and cause to be raised by taxation or otherwise moneys sufficient to carry out such purpose. [1967 c 166 § 5.]

67.30.050 Powers additional and supplemental to other laws. The powers and authority conferred upon counties and cities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other such powers or authority. [1967 c 166 § 6.]

67.30.900 Severability—1967 c 166. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 166 § 7.]

Chapter 67.32

WASHINGTON STATE RECREATION TRAILS SYSTEM

Sections

67.32.010	Short title.
67.32.020	Definitions.
67.32.030	Purpose.
67.32.040	Trails to be designated by IAC—Inclusion of other trails—Procedure.
67.32.050	State trails plan.
67.32.060	Proposals for designation of existing or proposed trails as state recreational trails.
67.32.070	Coordination by IAC.
67.32.080	Categories of trails or areas—Policy statement as to certain state lands.
67.32.090	General types of use.
67.32.100	Guidelines.
67.32.110	Consultation and cooperation with state, federal and local agencies.
67.32.130	Participation by volunteer organizations—Liability of public agencies therefor limited.
67.32.140	Department of transportation—Participation.

Disposition of off-road vehicle moneys: RCW 46.09.110.

Severance or destruction of trails by highway construction, alternative or reconstruction: RCW 47.30.010.

Trails or paths along highways: RCW 47.30.020.

67.32.010 Short title. This chapter may be cited as the Washington State Recreation Trails System Act. [1970 ex.s. c 76 § 1.]

67.32.020 Definitions. As used in this chapter, "IAC" means the Washington state interagency committee for outdoor recreation, and "system" means the Washington state recreation trails system. [1970 ex.s. c 76 § 2.]

Interagency committee for outdoor recreation: Chapter 43.99 RCW.

67.32.030 Purpose. (1) In order to provide for the ever increasing outdoor recreation needs of an expanding resident and tourist population and to promote public access to, travel within, and the enjoyment and appreciation of outdoor areas of Washington, it is declared to be in the public interest to plan a system of trails throughout the state to enable and encourage the public to engage in outdoor recreation activities.

(2) The purpose of this chapter is to provide the means for attaining these objectives by instituting a method for establishing a system of state recreation trails, and by

prescribing the manner by which a proposed trail may be included in the system. [1970 ex.s. c 76 § 3.]

67.32.040 Trails to be designated by IAC—Inclusion of other trails—Procedure. (1) The system shall be composed of trails as designated by the IAC. Such trails shall meet the conditions established in this chapter and such supplementary criteria as the IAC may prescribe.

(2) The IAC shall establish a procedure whereby federal, state, and local governmental agencies and/or public and private organizations may propose trails for inclusion within the system. Such proposals will comply with the proposal requirements contained in RCW 67.32.060.

(3) In consultation with appropriate federal, state, and local governmental agencies and public and private organizations, the IAC shall establish a procedure for public review of the proposals considered appropriate for inclusion in the state-wide trails system. [1970 ex.s. c 76 § 4.]

67.32.050 State trails plan. The director shall prepare a state trails plan as part of the state-wide outdoor recreation and open space plan. Included in this plan shall be an inventory of existing trails and potential trail routes on all lands within the state presently being used or with potential for use by all types of trail users. Such trails plan may include general routes or corridors within which specific trails or segments thereof may be considered for designation as state recreation trails. [1989 c 237 § 7; 1971 ex.s. c 47 § 1; 1970 ex.s. c 76 § 5.]

Effective date—1989 c 237: See note following RCW 43.99.010.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.060 Proposals for designation of existing or proposed trails as state recreational trails. Before any specific existing or proposed trail is considered for designation as a state recreational trail, a proposal must be submitted to the IAC showing the following:

(1) For existing trails:

(a) The route of such trail, including maps and illustrations, and the recommended mode or modes of travel to be permitted thereon;

(b) The characteristics that, in the judgment of the agency or organization proposing the trail, make it worthy of designation as a component of a state recreation trail or trail system;

(c) A map showing the current status of land ownership and use along the designated route;

(d) The name of the agency or combination of agencies that would be responsible for acquiring additional trail rights-of-way or easements, trail improvement, operation and maintenance, and a statement from those agencies indicating the conditions under which they would be willing to accept those responsibilities;

(e) Any anticipated problems of maintaining and supervising the use of such trail and any anticipated hazards to the use of any land or resource adjacent to such trail;

(f) And such others as deemed necessary by the IAC.

(2) In addition, for proposed trails or for existing trails which require additional right-of-way acquisition, easements, and/or development:

- (a) The method of acquiring trail rights-of-way or easements;
- (b) The estimated cost of acquisition of lands, or interest in land, if any is required;
- (c) The plans for developing the trail and the estimated cost thereof;
- (d) Proposed sources of funds to accomplish (2)(a) and (2)(b) of this section. [1970 ex.s. c 76 § 6.]

67.32.070 Coordination by IAC. Following designation of a state recreation trail, the IAC may coordinate:

- (1) The agency or agencies that will acquire (where appropriate), develop and/or maintain the trail;
- (2) The most appropriate location for the trail;
- (3) Modes of travel to be permitted;
- (4) And other functions as appropriate. [1970 ex.s. c 76 § 7.]

67.32.080 Categories of trails or areas—Policy statement as to certain state lands. The following seven categories of trails or areas are hereby established for purposes of this chapter:

- (1) Cross-state trails which connect scenic, historical, geological, geographical, or other significant features which are characteristic of the state;
- (2) Water-oriented trails which provide a designated path to, on, or along fresh and/or salt water in which the water is the primary point of interest;
- (3) Scenic-access trails which give access to quality recreation, scenic, historic or cultural areas of state-wide or national significance;
- (4) Urban trails which provide opportunities within an urban setting for walking, bicycling, horseback riding, or other compatible activities. Where appropriate, they will connect parks, scenic areas, historical points, and neighboring communities;
- (5) Historical trails which identify and interpret routes which were significant in the historical settlement and development of the state;
- (6) ORV vehicle trails which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. Such trails may be included as a part of the trail systems enumerated in subsections (1), (2), (3) and (5) of this section or may be separately designated;
- (7) Off-road and off-trail areas which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. IAC shall coordinate an inventory and classification of such areas giving consideration to the type of use such areas will receive from persons operating four-wheel drive vehicles and two-wheel vehicles.

The planning and designation of trails shall take into account and give due regard to the interests of federal agencies, state agencies and bodies, counties, municipalities, private landowners and individuals, and interested recreation organizations. It is not required that the above categories be used to designate specific trails, but the IAC will assure that full consideration is given to including trails from all categories within the system. As it relates to all classes of trails

and to all types of trail users, it is herein declared as state policy to increase recreational trail access to and within state and federally owned lands and private lands where access may be obtained. It is the intent of the legislature that public recreation facilities be developed as fully as possible to provide greater recreation opportunities for the citizens of the state. The purpose of chapter 153, Laws of 1972 ex. sess. is to increase the availability of trails and areas for off-road vehicles by granting authority to state and local governments to maintain a system of ORV trails and areas, and to fund the program to provide for such development. State lands should be used as fully as possible for all public recreation which is compatible with the income-producing requirements of the various trusts. [1977 ex.s. c 220 § 21; 1972 ex.s. c 153 § 1; 1971 ex.s. c 47 § 2; 1970 ex.s. c 76 § 8.]

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.090 General types of use. All trails designated as state recreational trails will be constructed, maintained, and operated to provide for one or more of the following general types of use: Foot, foot powered bicycle, horse, motor vehicular or watercraft travel as appropriate to the terrain and location, or to legal, administrative or other necessary restraints. It is further provided that the same trail shall not be designated for use by foot and vehicular travel at the same time. [1970 ex.s. c 76 § 9.]

67.32.100 Guidelines. With the concurrence of any federal or state agency administering lands through which a state recreation trail may pass, and after consultation with local governments, private organizations and landowners which the IAC knows or believes to be concerned, the IAC may issue guidelines including, but not limited to: Encouraging the permissive use of volunteer organizations for planning, maintenance or trail construction assistance; trail construction and maintenance standards, a trail use reporting procedure, and a uniform trail mapping system. [1971 ex.s. c 47 § 3; 1970 ex.s. c 76 § 10.]

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.110 Consultation and cooperation with state, federal and local agencies. The IAC is authorized and encouraged to consult and to cooperate with any state, federal or local governmental agency or body including special districts subject to the provisions of chapter 85.38 RCW, with private landowners, and with any privately owned utility having jurisdiction or control over or information concerning the use, abandonment or disposition of roadways, utility rights-of-way, dikes or levees, or other properties suitable for the purpose of improving or expanding the system in order to assure, to the extent practicable, that any such properties having value for state recreation trail purposes may be made available for such use. [1993 c 258 § 1; 1970 ex.s. c 76 § 11.]

67.32.130 Participation by volunteer organizations—Liability of public agencies therefor limited. Volunteer organizations may assist public agencies, with the agency's approval, in the construction and maintenance of recreational trails in accordance with the guidelines issued by the interagency committee. In carrying out such volunteer activities the members of the organizations shall not be considered employees or agents of the public agency administering the trails, and such public agencies shall not be subject to any liability whatsoever arising out of volunteer activities. The liability of public agencies to members of such volunteer organizations shall be limited in the same manner as provided for in RCW 4.24.210. [1971 ex.s. c 47 § 4.]

Severability—1971 ex.s. c 47: See RCW 46.09.900

Application of chapter—Permission necessary to enter upon private lands:
RCW 46.09.010.

67.32.140 Department of transportation—Participation. The department of transportation shall consider plans for trails along and across all new construction projects, improvement projects, and along or across any existing highways in the state system as deemed desirable by the IAC. [1984 c 7 § 368; 1971 ex.s. c 47 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands:
RCW 46.09.010.

Chapter 67.38

CULTURAL ARTS, STADIUM AND CONVENTION DISTRICTS

Sections

67.38.010	Purpose.
67.38.020	Definitions.
67.38.030	Cultural arts, stadium and convention district—Creation.
67.38.040	Multicounty district—Creation.
67.38.050	Governing body.
67.38.060	Comprehensive plan—Development—Elements.
67.38.070	Comprehensive plan—Review—Approval or disapproval—Resubmission.
67.38.080	Annexation election.
67.38.090	District as quasi municipal corporation—General powers.
67.38.100	Additional powers.
67.38.110	Issuance of general obligation bonds—Maturity—Excess levies.
67.38.120	Revenue bonds—Issuance, sale, term, payment.
67.38.130	Cultural arts, stadium and convention district tax levies.
67.38.140	Contribution of sums for limited purposes.
67.38.150	Treasurer and auditor—Bond—Duties—Funds—Depositories.
67.38.160	Dissolution and liquidation.
67.38.900	Captions not law—1982 1st ex.s. c 22.
67.38.905	Severability—1982 1st ex.s. c 22.

67.38.010 Purpose. The legislature finds that expansion of a cultural tourism would attract new visitors to our state and aid the development of a nonpolluting industry. The creation or renovation, and operation of cultural arts, stadium and convention facilities benefiting all the citizens of this state would enhance the recreational industry's ability to attract such new visitors. The additional income and

employment resulting therefrom would strengthen the economic base of the state.

It is declared that the construction, modification, renovation, and operation of facilities for cultural arts, stadium and convention uses will enhance the progress and economic growth of this state. The continued growth and development of this recreational industry provides for the general welfare and is an appropriate matter of concern to the people of the state of Washington. [1982 1st ex.s. c 22 § 1.]

67.38.020 Definitions. Unless the context clearly indicates otherwise, for the purposes of this chapter the following definitions shall apply:

(1) "Cultural arts, stadium and convention district," or "district," means a quasi municipal corporation of the state of Washington created pursuant to this chapter.

(2) "Component city" means an incorporated city within a public cultural arts, stadium and convention benefit area.

(3) "City" means any city or town.

(4) "City council" means the legislative body of any city.

(5) "Municipality" means a port district, public school district or community college district. [1982 1st ex.s. c 22 § 2.]

67.38.030 Cultural arts, stadium and convention district—Creation. (1) The process to create a cultural arts, stadium and convention district may be initiated by:

(a) The adoption of a resolution by the county legislative authority calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district; or

(b) The governing bodies of two or more cities located within the same county adopting resolutions calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of such a district: PROVIDED, That this method may not be used more frequently than once in any twelve month period in the same county; or

(c) The filing of a petition with the county legislative authority, calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district, that is signed by at least ten percent of the registered voters residing in the proposed district at the last general election. Such signatures will be certified by the county auditor or the county elections department.

(2) Within sixty days of the adoption of such resolutions, or presentation of such a petition, the county legislative authority shall hold a public hearing on the proposed creation of such a district. Notice of the hearing shall be published at least once a week for three consecutive weeks in one or more newspapers of general circulation within the proposed boundaries of the district. The notice shall include a general description and map of the proposed boundaries. Additional notice shall also be mailed to the governing body of each city and municipality located all or partially within the proposed district. At such hearing, or any continuation thereof, any interested party may appear and be heard on the formation of the proposed district.

The county legislative authority shall delete the area included within the boundaries of a city from the proposed district if prior to the public hearing the city submits to the

county legislative authority a copy of an adopted resolution requesting its deletion from the proposed district. The county legislative authority may delete any other areas from the proposed boundaries. Additional territory may be included within the proposed boundaries, but only if such inclusion is subject to a subsequent hearing, with notice provided in the same manner as for the original hearing.

(3) A proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district within two years of the adoption of a resolution providing for such submittal by the county legislative authority at the conclusion of such hearings. The resolution shall establish the boundaries of the district and include a finding that the creation of the district is in the public interest and that the area included within the district can reasonably be expected to benefit from its creation. No portion of a city may be included in such a district unless the entire city is included. The boundaries of such a district shall follow school district or community college boundaries in as far as practicable.

(4) The proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district at the next general election held sixty or more days after the adoption of the resolution. The district shall be created upon approval of the proposition by simple majority vote. The ballot proposition submitted to the voters shall be in substantially the following form:

**FORMATION OF CULTURAL ARTS,
STADIUM AND CONVENTION
DISTRICT**

Shall a cultural arts, stadium and convention district be established for the area described in a resolution of the legislative authority of . . . county, adopted on the . . . day of . . . , 19. . . ?

[1982 1st ex.s. c 22 § 3.]

67.38.040 Multicounty district—Creation. A joint hearing by the legislative authorities of two or more counties on the proposed creation of a cultural arts, stadium and convention district including areas within such counties may be held as provided herein:

(1) The process to initiate such a hearing shall be identical with the process provided in RCW 67.38.030(1), except a resolution of all the legislative authorities of each county with territory proposed to be included shall be necessary.

(2) No territory may be added to or deleted from such a proposed district, except by action of the county legislative authority of the county within whose boundaries the territory lies pursuant to the process provided in RCW 67.38.030.

(3) The resolutions shall each contain identical provisions concerning the governing body, as delineated in RCW 67.38.050. [1982 1st ex.s. c 22 § 4.]

67.38.050 Governing body. The number of persons on the governing body of the district and how such persons shall be selected and replaced shall be included in the resolution of the county legislative authority providing for the submittal of the proposition to create the district to the voters. Members of the governing body may only consist of

a combination of city council members or mayors of the city or cities included within the district, members of the county legislative authority, the county executive of a county operating under a home rule charter, elected members of the governing bodies of municipalities located within the district, and members of the board of regents of a community college district. No governing body may consist of more than nine members. The resolution may also provide for additional, ex officio, nonvoting members consisting of elected officials or appointed officials from the counties, cities, or municipalities which are located all or partially within the boundaries of such a district and who [which] do not have elected or appointed officials sitting on the governing body.

Any member of the governing body, or any ex officio member, who is not an elective official whose office is a full-time position may be reimbursed for reasonable expenses actually incurred in attending meetings or engaging in other district business as provided in RCW 42.24.090. [1982 1st ex.s. c 22 § 5.]

67.38.060 Comprehensive plan—Development—Elements. The cultural arts, stadium and convention district, as authorized in this chapter, shall develop a comprehensive cultural arts, stadium and convention plan for the district. Such plan shall include, but not be limited to the following elements:

(1) The levels of cultural arts, stadium and convention services that can be reasonably provided for various portions of the district.

(2) The funding requirements, including local tax sources or federal funds, necessary to provide various levels of service within the district.

(3) The impact of such a service on other cultural arts, stadium and convention systems operating within that county or adjacent counties. [1982 1st ex.s. c 22 § 6.]

67.38.070 Comprehensive plan—Review—Approval or disapproval—Resubmission. The comprehensive cultural arts, stadium and convention plan adopted by the district shall be reviewed by the department of community, trade, and economic development to determine:

(1) Whether the plan will enhance the progress of the state and provide for the general welfare of the population; and

(2) Whether such plan is eligible for matching federal funds.

After reviewing the comprehensive cultural arts, stadium and convention plan, the department of community, trade, and economic development shall have sixty days in which to approve such plan and to certify to the state treasurer that such district shall be eligible to receive funds. To be approved a plan shall provide for coordinated cultural arts, stadium and convention planning, and be consistent with the public cultural arts, stadium and convention coordination criteria in a manner prescribed by chapter 35.60 RCW. In the event such comprehensive plan is disapproved and ruled ineligible to receive funds, the department of community, trade, and economic development shall provide written notice to the district within thirty days as to the reasons for such plan's disapproval and such ineligibility. The district may resubmit such plan upon reconsideration and correction of

such deficiencies cited in such notice of disapproval. [1995 c 399 § 167; 1985 c 6 § 22; 1982 1st ex.s. c 22 § 7.]

67.38.080 Annexation election. An election to authorize the annexation of contiguous territory to a cultural arts, stadium and convention district may be submitted to the voters of the area proposed to be annexed upon the passage of a resolution of the governing body of the district. Approval by simple majority vote shall authorize such annexation. [1982 1st ex.s. c 22 § 8.]

67.38.090 District as quasi municipal corporation—General powers. A cultural arts, stadium and convention district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1, of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2, of the state Constitution. A district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purpose. In addition to the powers specifically granted by this chapter, a district shall have all powers which are necessary to carry out the purposes of this chapter. A cultural arts, stadium and convention district may contract with the United States or any agency thereof, any state or agency thereof, any other cultural arts, stadium and convention district, any county, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or renovation or operation of cultural arts, stadium and convention facilities. In addition, a district may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights of way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the cultural arts, stadium and convention district may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any cultural arts, stadium and convention district facilities shall be let to any private person, firm or corporation, competitive bids shall be called upon such notice, bidder qualifications and bid conditions as the district shall determine.

A district may sue and be sued in its corporate capacity in all courts and in all proceedings. [1982 1st ex.s. c 22 § 9.]

67.38.100 Additional powers. The governing body of a cultural arts, stadium and convention district shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt and carry out a general comprehensive plan for cultural arts, stadium and convention service which will best serve the residents of the district and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, gift or grant and to lease, convey, construct, add to, improve, replace, repair, maintain, and operate cultural arts, stadium and convention facilities and properties within the district, including portable and mobile facilities and parking facilities and properties and such other facilities and properties as may be necessary for passenger and vehicular access to and from such facilities and properties, together with all lands, rights of way, property, equipment and accessories necessary for such systems and facilities. Cultural arts, stadium and convention facilities and properties which are presently owned by any component city, county or municipality may be acquired or used by the district only with the consent of the legislative authority, council or governing body of the component city, county or municipality owning such facilities. A component city, county or municipality is hereby authorized to convey or lease such facilities to a district or to contract for their joint use on such terms as may be fixed by agreement between the component city, county or municipality and the district, without submitting the matter to the voters of such component city, county or municipality.

(3) To fix rates and charges for the use of such facilities. [1982 1st ex.s. c 22 § 10.]

67.38.110 Issuance of general obligation bonds—Maturity—Excess levies. To carry out the purpose of this chapter, any cultural arts, stadium and convention district shall have the power to issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness equal to three-eighths of one percent of the value of taxable property within such district, as the term "value of taxable property" is defined in RCW 39.36.015. A cultural arts, stadium and convention district is additionally authorized to issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to three-fourths of one percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, and to provide for the retirement thereof by excess levies when the voters approve a ballot proposition providing for both the bond issuance and imposition of such levies at a special election called for that purpose in the manner prescribed by section 6, Article VIII and section 2, Article VII of the Constitution and by RCW 84.52.056. Elections shall be held as provided in RCW 39.36.050. General obligation bonds may not be issued with maturities in excess of forty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 57; 1983 c 167 § 169; 1982 1st ex.s. c 22 § 11.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.38.120 Revenue bonds—Issuance, sale, term, payment. (1) To carry out the purposes of this chapter, the cultural arts, stadium and convention district shall have the power to issue revenue bonds: PROVIDED, That the district governing body shall create or have created a special fund or funds for the sole purpose of paying the principal of and

interest on the bonds of each such issue, into which fund or funds the governing body may obligate the district to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, repaired or replaced pursuant to this chapter, as the governing body shall determine: PROVIDED FURTHER, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The governing body of a district shall have such further powers and duties in carrying out the purposes of this chapter as provided in RCW 67.28.160.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 170; 1982 1st ex.s. c 22 § 12.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.38.130 Cultural arts, stadium and convention district tax levies. The governing body of a cultural arts, stadium and convention district may levy or cause to levy the following ad valorem taxes:

(1) Regular ad valorem property tax levies in an amount equal to twenty-five cents or less per thousand dollars of the assessed value of property in the district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the electors thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percentum of the total votes cast in such taxing district at the last preceding general election; or by a majority of at least three-fifths of the electors thereof voting on the proposition when the number of electors voting yes on the proposition exceeds forty percentum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111.

In the event a cultural arts, stadium and convention district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article VII, section 2, of our state Constitution result in taxes in excess of the limitation provided for in RCW 84.52.043, the cultural arts, stadium and convention district property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced: PROVIDED, That no cultural arts, stadium, and convention district may pledge anticipated revenues derived from the property tax herein authorized as security for payments of bonds issued pursuant to subsection (1) of this section: PROVIDED, FURTHER, That such limitation shall not apply to property taxes approved pursuant to subsections (2) and (3) of this section.

The limitation in RCW 84.55.010 shall apply to levies after the first levy authorized under this section following the approval of such levy by voters pursuant to this section.

(2) An annual excess ad valorem property tax for general district purposes when authorized by the district

voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.052.

(3) Multi-year excess ad valorem property tax levies used to retire general obligation bond issues when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.056.

The district shall include in its regular property tax levy for each year a sum sufficient to pay the interest and principal on all outstanding general obligation bonds issued without voter approval pursuant to RCW 67.38.110 and may include a sum sufficient to create a sinking fund for the redemption of all outstanding bonds. [1984 c 131 § 4; 1982 1st ex.s. c 22 § 13.]

Purpose—1984 c 131 §§ 3-9: See note following RCW 29.30.111.

67.38.140 Contribution of sums for limited purposes. The county or counties and each component city included in the district collecting or planning to collect the hotel/motel tax under chapter 67.28 RCW may contribute such revenue in such manner as shall be agreed upon between them, consistent with this chapter and chapter 67.28 RCW. [1997 c 452 § 18; 1982 1st ex.s. c 22 § 14.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.38.150 Treasurer and auditor—Bond—Duties—Funds—Depositaries. Unless the cultural arts, stadium and convention district governing body, by resolution, designates some other person having experience in financial or fiscal matters as treasurer of the district, the treasurer of the county in which a cultural arts, stadium and convention district is located shall be ex officio treasurer of the district: PROVIDED, That in the case of a multicounty cultural arts, stadium and convention district, the county treasurer of the county with the greatest amount of area within the district shall be the ex officio treasurer of the district. The district may, and if the treasurer is not a county treasurer shall, require a bond for such treasurer with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions as agreed to by the district, by resolution, in such amount from time to time which will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All district funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by an auditor appointed by the district, upon orders or vouchers approved by the governing body. The treasurer shall establish a "cultural arts, stadium and convention fund," into which shall be paid district funds as provided in RCW 67.38.140 and the treasurer shall maintain such special funds as may be created by the governing body into which said treasurer shall place all moneys as the governing body may, by resolution, direct.

If the treasurer of the district is a treasurer of the county, all district funds shall be deposited with the county depository under the same restrictions, contracts, and security as provided for county depositories; the county auditor of such county shall keep the records of the receipts and disbursements, and shall draw, and such county treasurer shall honor and pay all warrants, which shall be approved

before issuance and payment as directed by the district. [1982 1st ex.s. c 22 § 15.]

67.38.160 Dissolution and liquidation. A cultural arts, stadium and convention district established in accordance with this chapter shall be dissolved and its affairs liquidated when so directed by a majority of persons in the district voting on such question. An election placing such question before the voters may be called in the following manner:

(1) By resolution of the cultural arts, stadium and convention district governing authority;

(2) By resolution of the county legislative body or bodies with the concurrence therein by resolution of the city council of a component city; or

(3) By petition calling for such election signed by at least ten percent of the qualified voters residing within the district filed with the auditor of the county wherein the largest portion of the district is located. The auditor shall examine the same and certify to the sufficiency of the signatures thereon: PROVIDED, That to be validated, signatures must have been collected within a ninety-day period as designated by the petition sponsors.

With dissolution of the district, any outstanding obligations and bonded indebtedness of the district shall be satisfied or allocated by mutual agreement to the county or counties and component cities of the cultural arts, stadium and convention district. [1982 1st ex.s. c 22 § 16.]

67.38.900 Captions not law—1982 1st ex.s. c 22. Section captions as used in this amendatory act shall not be construed as and do not constitute any part of the law. [1982 1st ex.s. c 22 § 19.]

67.38.905 Severability—1982 1st ex.s. c 22. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 22 § 21.]

Chapter 67.40

CONVENTION AND TRADE FACILITIES

Sections

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- 67.40.901 Severability—1988 ex.s. c 1.

67.40.010 Legislative finding. The legislature finds and declares as the express purpose of this chapter:

(1) The convention and trade show business will provide both direct and indirect civic and economic benefits to the people of the state of Washington.

(2) The location of a state convention and trade center in the city of Seattle will particularly benefit and increase the occupancy of larger hotels and other lodging facilities in the city of Seattle and to a lesser extent in King county.

(3) Imposing a special excise tax on the price of lodging in Seattle, and at a lower rate elsewhere in King county, is an appropriate method of paying for a substantial part of the cost of constructing, maintaining, and operating a state convention and trade center. [1983 2nd ex.s. c 1 § 1; 1982 c 34 § 1.]

67.40.020 State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties. (1) The governor is authorized to form a public nonprofit corporation in the same manner as a private nonprofit corporation is formed under chapter 24.03 RCW. The public corporation shall be an instrumentality of the state and have all the powers and be subject to the same restrictions as are permitted or prescribed to private nonprofit corporations, but shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The governor shall appoint a board of nine directors for the corporation who shall serve terms of six years, except that two of the original directors shall serve for two years and two of the original directors shall serve for four years. After January 1, 1991, at least one position on the board shall be filled by a member representing management in the hotel or motel industry subject to taxation under RCW 67.40.090. The directors may provide for the payment of their expenses. The corporation may acquire, construct, expand, and improve

the state convention and trade center within the city of Seattle. Notwithstanding the provisions of subsection (2) of this section, the corporation may acquire, lease, sell, or otherwise encumber property rights, including but not limited to development or condominium rights, deemed by the corporation as necessary for facility expansion.

(2) The corporation may acquire and transfer real and personal property by lease, sublease, purchase, or sale, and further acquire property by condemnation of privately owned property or rights to and interests in such property pursuant to the procedure in chapter 8.04 RCW. However, acquisitions and transfers of real property, other than by lease, may be made only if the acquisition or transfer is approved by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives. The corporation may accept gifts or grants, request the financing provided for in RCW 67.40.030, cause the state convention and trade center facilities to be constructed, and do whatever is necessary or appropriate to carry out those purposes. Upon approval by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate, the corporation may enter into lease and sublease contracts for a term exceeding the fiscal period in which these lease and sublease contracts are made. The terms of sale or lease of properties acquired by the corporation on February 9, 1987, pursuant to the property purchase and settlement agreement entered into by the corporation on June 12, 1986, including the McKay parcel which the corporation is contractually obligated to sell under that agreement, shall also be subject to the approval of the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate. No approval by the director of financial management is required for leases of individual retail space, meeting rooms, or convention-related facilities. In order to allow the corporation flexibility to secure appropriate insurance by negotiation, the corporation is exempt from RCW 48.30.270. The corporation shall maintain, operate, promote, and manage the state convention and trade center.

(3) In order to allow the corporation flexibility in its personnel policies, the corporation is exempt from chapter 41.06 RCW, chapter 41.05 RCW, RCW 43.01.040 through 43.01.044, chapter 41.04 RCW and chapter 41.40 RCW. [1995 c 386 § 12; 1993 c 500 § 9; 1988 ex.s. c 1 § 1; 1987 1st ex.s. c 8 § 2; 1984 c 210 § 1; 1983 2nd ex.s. c 1 § 2; 1982 c 34 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Severability—1987 1st ex.s. c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 8 § 17.]

Savings—1984 c 210: "This act shall not terminate or modify any right acquired under a contract of employment in existence prior to March 27, 1984." [1984 c 210 § 7.]

Severability—1984 c 210: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 210 § 8.]

67.40.025 State convention and trade center operations account—Operating revenues—Expenditures. All operating revenues received by the corporation formed under RCW 67.40.020 shall be deposited in the state convention and trade center operations account, hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operation and promotion of the center.

Subject to approval by the office of financial management under RCW 43.88.260, the corporation may expend moneys for operational purposes in excess of the balance in the account, to the extent the corporation receives or will receive additional operating revenues.

As used in this section, "operating revenues" does not include any moneys required to be deposited in the state convention and trade center account. [1988 ex.s. c 1 § 2; 1987 1st ex.s. c 8 § 3; 1985 c 233 § 2.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.027 Compensation and travel expenses of board members. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1985 c 233 § 3.]

Reimbursement for out-of-state travel expenses incurred by employees of state convention and trade center: RCW 43.03.062.

67.40.030 General obligation bonds—Authorized—Appropriation required. For the purpose of providing funds for the state convention and trade center, the state finance committee is authorized to issue, upon request of the corporation formed under RCW 67.40.020 and in one or more offerings, general obligation bonds of the state of Washington in the sum of one hundred sixty million, seven hundred sixty-five thousand dollars, or so much thereof as may be required, to finance this project and all costs incidental thereto, to capitalize all or a portion of interest during construction, to provide for expansion, renovation, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, and contingency costs of the center, purchase of the McKay Parcel as defined in the property and purchase agreement entered into by the corporation on June 12, 1986, development of low-income housing and to reimburse the general fund for expenditures in support of the project. The state finance committee may make such bond covenants as it deems necessary to carry out the purposes of this section and this chapter. No bonds authorized in this section may be offered for sale without prior legislative appropriation. [1990 c 181 § 1; 1988 ex.s. c 1 § 3; 1987 1st ex.s. c 3 § 12; 1985 c 233 § 1; 1983 2nd ex.s. c 1 § 3; 1982 c 34 § 3.]

Severability—1987 1st ex.s. c 3: See RCW 43.99G.901.

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, proceeds of the taxes imposed under RCW 67.40.090 and 67.40.130, and all other moneys received by the state

convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, and those expenditures authorized under RCW 67.40.170 shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;

(ii) For expenditures authorized in RCW 67.40.170;

(iii) For acquisition, design, and construction of the state convention and trade center; and

(iv) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended.

(4) In order to ensure consistent treatment of bonds authorized under RCW 67.40.030 with applicable provisions of the Internal Revenue Code of 1986, as amended, and notwithstanding RCW 43.84.092, investment earnings on bond proceeds deposited in the state convention and trade center account in the state treasury shall be retained in the account, and shall be expended by the corporation for the purposes authorized under chapter 386, Laws of 1995 and in a manner consistent with applicable provisions of the Internal Revenue Code of 1986, as amended. [1995 c 386 § 13; 1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

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

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

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

67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.

(1) The director of financial management, in consultation

with the chairpersons of the appropriate fiscal committees of the senate and house of representatives, may authorize temporary borrowing from the state treasury for the purpose of covering cash deficiencies in the state convention and trade center account resulting from project completion costs. Subject to the conditions and limitations provided in this section, lines of credit may be authorized at times and in amounts as the director of financial management determines are advisable to meet current and/or anticipated cash deficiencies. Each authorization shall distinctly specify the maximum amount of cash deficiency which may be incurred and the maximum time period during which the cash deficiency may continue. The total amount of borrowing outstanding at any time shall never exceed the lesser of:

(a) \$58,275,000; or

(b) An amount, as determined by the director of financial management from time to time, which is necessary to provide for payment of project completion costs.

(2) Unless the due date under this subsection is extended by statute, all amounts borrowed under the authority of this section shall be repaid to the state treasury by June 30, 1999, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. Borrowing may be authorized from any excess balances in the state treasury, except the agricultural permanent fund, the Millersylvania park permanent fund, the state university permanent fund, the normal school permanent fund, the permanent common school fund, and the scientific permanent fund.

(3) As used in this section, "project completion" means:

(a) All remaining development, construction, and administrative costs related to completion of the convention center; and

(b) Costs of the McKay building demolition, Eagles building rehabilitation, development of low-income housing, and construction of rentable retail space and an operable parking garage.

(4) It is the intent of the legislature that project completion costs be paid ultimately from the following sources:

(a) \$29,250,000 to be received by the corporation under an agreement and settlement with Industrial Indemnity Co.;

(b) \$1,070,000 to be received by the corporation as a contribution from the city of Seattle;

(c) \$20,000,000 from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(d) \$4,765,000 for contingencies and project reserves from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(e) \$13,000,000 for conversion of various retail and other space to meeting rooms, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(f) \$13,300,000 for expansion at the 900 level of the facility, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(g) \$10,400,000 for purchase of the land and building known as the McKay Parcel, for development of low-income housing, for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction

litigation, and for partially refunding obligations under the parking garage revenue note issued by the corporation to Industrial Indemnity Company in connection with the agreement and settlement identified in (a) of this subsection, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090. All proceeds from any sale of the McKay parcel shall be deposited in the state convention and trade center account and shall not be expended without appropriation by law;

(h) \$300,000 for Eagles building exterior cleanup and repair, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090; and

(i) The proceeds of the sale of any properties owned by the state convention and trade center that are not planned for use for state convention and trade center operations, with the proceeds to be used for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation.

(5) The borrowing authority provided in this section is in addition to the authority to borrow from the general fund to meet the bond retirement and interest requirements set forth in RCW 67.40.060. To the extent the specific conditions and limitations provided in this section conflict with the general conditions and limitations provided for temporary cash deficiencies in RCW 43.88.260 (section 7, chapter 502, Laws of 1987), the specific conditions and limitations in this section shall govern.

(6) For expenditures authorized under RCW 67.40.170, the corporation may use the proceeds of the special excise tax authorized under RCW 67.40.090, the sales tax authorized under RCW 67.40.130, contributions to the corporation from public or private participants, and investment earnings on any of the funds listed in this subsection. [1995 c 386 § 14; 1993 sp.s. c 12 § 9; 1992 c 4 § 1; 1991 c 2 § 1; 1990 c 181 § 3; 1988 ex.s. c 1 § 9; 1987 1st ex.s. c 8 § 1.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Severability—1993 sp.s. c 12: See RCW 43.991.900.

Severability—1991 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 2 § 5.]

67.40.050 Administration of proceeds. The moneys deposited pursuant to RCW 67.40.040 in the state convention and trade center account of the general fund shall be administered by the corporation formed under RCW 67.40.020, subject to legislative appropriation. [1982 c 34 § 5.]

67.40.055 Transfer of funds to account—Repayment of borrowed funds with interest. The state treasurer shall from time to time transfer from the state general fund, or such other funds as the state treasurer deems appropriate, to the state convention and trade center operations account such amounts as are necessary to fund appropriations from the account, other than, after August 31, 1988, for appropriations for the purpose of marketing the facilities or services of the state convention and trade center. All amounts borrowed under the authority of this section shall be repaid to the appropriate fund, together with interest at a rate

determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. [1988 ex.s. c 1 § 5; 1987 1st ex.s. c 8 § 11.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders. The nondebt-limit proprietary appropriated bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the nondebt-limit proprietary appropriated bond retirement account an amount equal to the amount certified by the state finance committee to be due on that payment date. On each date on which any interest or principal and interest is due, the state treasurer shall cause an identical amount to be paid out of the state convention and trade center account, or state convention and trade center operations account, from the proceeds of the special excise tax imposed under RCW 67.40.090, operating revenues of the state convention and trade center, and bond proceeds and earnings on the investment of bond proceeds, for deposit in the general fund of the state treasury. Any deficiency in such transfer shall be made up as soon as special excise taxes are available for transfer and shall constitute a continuing obligation of the state convention and trade center account until all deficiencies are fully paid.

Bonds issued under RCW 67.40.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1997 c 456 § 25; 1987 1st ex.s. c 8 § 5; 1983 2nd ex.s. c 1 § 5; 1982 c 34 § 6.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.070 Legislature may provide additional means for payment of bonds. The legislature may increase the rate of tax imposed in RCW 67.40.090 (1) and (2) or may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030, and RCW 67.40.060 shall not be deemed

to provide an exclusive method for the payment. [1982 c 34 § 7.]

67.40.080 Bonds legal investment for public funds.

The bonds authorized in RCW 67.40.030 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1982 c 34 § 8.]

67.40.090 Special excise tax imposed in King county—Hotel, motel, rooming house, trailer camp, etc., charges—Rates—Proceeds.

(1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, except that no such tax may be levied on any premises having fewer than sixty lodging units. It shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes rental or lease of real property and not a mere license to use or enjoy the same. The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, and until bonds and all other borrowings authorized under RCW 67.40.030 are retired, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) Except as otherwise provided in (d) of this subsection, on and after the change date, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of 1998 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section. [1995 c 386 § 15; 1991 c 2 § 3; 1988 ex.s. c 1 § 6; 1987 1st ex.s. c 8 § 6; 1982 c 34 § 9.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Severability—1991 c 2: See note following RCW 67.40.045

Intent—1988 ex.s. c 1 § 6: "The legislature intends that the additional revenue generated by the increase in the special excise tax from five to six percent in the city of Seattle and from two percent to two and four-tenths percent in King county outside the city of Seattle be used for marketing the facilities and services of the convention center, for promoting the locale as a convention and visitor destination, and for related activities. Actual use of these funds shall be determined through biennial appropriation by the legislature." [1988 ex.s. c 1 § 7.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020

Special excise taxes authorized for public stadium, convention, performing arts, visual arts, and tourism facilities: Chapter 67.28 RCW.

67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc. Except as provided in chapters 67.28 and 82.14 RCW and RCW 67.28.181, after January 1, 1983, no city, town, or county in which the tax under RCW 67.40.090 is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail as that term is defined in chapter 82.04 RCW. [1997 c 452 § 15; 1990 c 242 § 1; 1988 ex.s. c 1 § 25; 1982 c 34 § 10.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181

Application—1990 c 242: "This 1990 amendment applies to all proceeds of the tax authorized under RCW 67.40.100(2), regardless of when levied or collected." [1990 c 242 § 2]

67.40.105 Exemption from tax—Emergency lodging for homeless persons—Conditions. (1) The tax levied by RCW 67.40.090 and the tax authorized under *RCW 67.40.100(2) shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecu-

tive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 3.]

***Reviser's note:** RCW 67.40.100 was amended by 1997 c 452 § 15, which deleted subsection (2).

Effective date—1988 c 61: See note following RCW 82.08.0299.

67.40.110 Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited. No city imposing the tax authorized under chapter 67.28 RCW may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under chapter 67.28 RCW to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 19; 1987 1st ex.s. c 8 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.120 Contracts for marketing facility and services—Matching nonstate funds. The state convention and trade center corporation may contract with the Seattle-King county convention and visitors bureau for marketing the convention and trade center facility and services. Any contract with the Seattle-King county convention and visitors bureau shall include, but is not limited to, the following condition: Each dollar in convention and trade center operations account funds provided to the Seattle-King county convention and visitors bureau shall be matched by at least one dollar and ten cents in nonstate funds. "Nonstate funds" does not include funds received under chapter 67.28 RCW. [1997 c 452 § 20; 1991 c 336 § 2; 1988 ex.s. c 1 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Effective date—1991 c 336: See note following RCW 67.28.180.

67.40.130 Convention and trade facilities—Tax on transient lodging authorized—Rates. (1) The governing body of a city, while not required by legislative mandate to do so, may, after July 1, 1995, by resolution or ordinance for the purposes authorized under RCW 67.40.170 and 67.40.190, fix and impose a sales tax on the charge for rooms to be used for lodging by transients in accordance with the terms of chapter 386, Laws of 1995. Such tax shall be collected from those persons who are taxable by the state under RCW 67.40.090, but only those taxable persons located within the boundaries of the city imposing the tax. The rate of such tax imposed by a city shall be two percent of the charge for rooms to be used for lodging by transients. Any such tax imposed under this section shall not be collected prior to January 1, 2000. The tax authorized under this section shall be levied and collected in the same manner

as those taxes authorized under chapter 82.14 RCW. Penalties, receipts, abatements, refunds, and all other similar matters relating to the tax shall be as provided in chapter 82.08 RCW.

(2) The tax levied under this section shall remain in effect and not be modified for that period for which the principal and interest obligations of state bonds issued to finance the expansion of the state convention and trade center under RCW 67.40.030 remain outstanding.

(3) As used in this section, the term "city" means a municipality that has within its boundaries a convention and trade facility as defined in RCW 67.40.020. [1995 c 386 § 1.]

Severability—1995 c 386: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 386 § 17.]

Effective date—1995 c 386: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 386 § 18.]

67.40.140 Convention and trade facilities—Remittance of tax—Credit. When remitting sales tax receipts to the state under RCW 82.14.050, the city treasurer, or its designee, shall at the same time remit the sales taxes collected under RCW 67.40.130 for the municipality. The sum so collected and paid over on behalf of the municipality shall be credited against the amount of the tax otherwise due to the state from those same taxpayers under RCW 82.08.020(1). [1995 c 386 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.150 Convention and trade facilities—Contract of administration and collection to department of revenue—Disposition of tax—Procedure. (1) The cities shall contract, prior to the effective date of a resolution or ordinance imposing a sales tax under RCW 67.40.130, the administration and collection of the local option sales tax to the state department of revenue at no cost to the municipality. The tax authorized by chapter 386, Laws of 1995 which is collected by the department of revenue shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury.

(2) The sales tax authorized under RCW 67.40.130 shall be due and payable in the same manner as those taxes authorized under RCW 82.14.030. [1995 c 386 § 3.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.160 Convention and trade facilities—Tax on construction—Disposition. The state sales tax on construction performed under RCW 67.40.170 collected by the department of revenue under chapter 82.08 RCW shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury. [1995 c 386 § 4.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.170 Convention and trade facilities—Use of collected taxes. All taxes levied and collected under RCW

67.40.130 shall be credited to the state convention and trade center account in the state treasury and used solely by the corporation formed under RCW 67.40.020 for the purpose of paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities related to the expansion recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess.; the acquisition, construction, and relocation costs of replacement housing; and the repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter. [1995 c 386 § 5.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.180 Convention and trade facilities—Use of funds—Acceptance by board of directors of funding commitment. Upon May 16, 1995, the corporation may proceed with preliminary design and planning activities, environmental studies, and real estate appraisals for convention center improvements. No other expenditures may be made in support of the expansion project recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess. prior to acceptance by the board of directors of the corporation of an irrevocable commitment for funding from public or private participants consistent with the expansion development study task force recommendations report dated December 1994. [1995 c 386 § 6.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.190 Convention and trade facilities—Use of funds—Encumbered revenue. (1) Moneys received from any tax imposed under RCW 67.40.130 shall be used for the purpose of providing funds to the corporation for the costs associated with paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities; the acquisition, construction, and relocation costs of replacement housing; and repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter.

(2) If any of the revenue from any local sales tax authorized under RCW 67.40.130 shall have been encumbered or pledged by the state to secure the payment of any state bonds as authorized under RCW 67.40.030, then as long as that agreement or pledge shall be in effect, the legislature shall not withdraw from the municipality the authority to levy and collect the tax or the tax credit authorized under RCW 67.40.130 and 67.40.140. [1995 c 386 § 7.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.900 Severability—1982 c 34. If any provision of this act or its application to any municipality, person, or circumstance is held invalid, the remainder of the act or the application of the provision to other municipalities, persons, or circumstances is not affected. [1982 c 34 § 13.]

67.40.901 Severability—1988 ex.s. c 1. See RCW 36.100.900.

Chapter 67.42 AMUSEMENT RIDES

Sections

67.42.010	Definitions.
67.42.020	Requirements—Operation of amusement ride or structure—Bungee jumping device inspection.
67.42.025	Inspections and inspectors—Comparable regulation and comparable qualification.
67.42.030	Permit—Application—Decal.
67.42.040	Permit—Duration—Material modification of ride or structure—Bungee jumping device replacement, movement, purchase.
67.42.050	Rules—Orders to cease operation—Administrative proceedings.
67.42.060	Fees
67.42.070	Penalty.
67.42.080	Counties and municipalities—Supplemental ordinances.
67.42.090	Bungee jumping—Permission.
67.42.900	Severability—1985 c 262.
67.42.901	Effective date—1985 c 262.

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

(1) "Amusement structure" means electrical or mechanical devices or combinations of devices operated for revenue and to provide amusement or entertainment to viewers or audiences at carnivals, fairs, or amusement parks. "Amusement structure" also means a bungee jumping device regardless of where located. "Amusement structure" does not include games in which a member of the public must perform an act, nor concessions at which customers may make purchases.

(2) "Amusement ride" means any vehicle, boat, bungee jumping device, or other mechanical device moving upon or within a structure, along cables or rails, through the air by centrifugal force or otherwise, or across water, that is used to convey one or more individuals for amusement, entertainment, diversion, or recreation. "Amusement ride" includes, but is not limited to, devices commonly known as skyrides, ferris wheels, carousels, parachute towers, tunnels of love, bungee jumping devices, and roller coasters. "Amusement ride" does not include: (a) Conveyances for persons in recreational winter sports activities such as ski lifts, ski tows, j-bars, t-bars, and similar devices subject to regulation under chapter 70.88 RCW; (b) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; (c) nonmechanized playground equipment, including but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers,

slides, trampolines, and physical fitness devices; or (d) water slides.

(3) "Department" means the department of labor and industries.

(4) "Insurance policy" means an insurance policy written by an insurer authorized to do business in this state under Title 48 RCW. [1993 c 203 § 2; 1985 c 262 § 1.]

Findings—Intent—1993 c 203: "(1) The legislature finds that:

Bungee jumping is growing in popularity as a new source of entertainment for the citizens of this state;

Individuals have suffered serious injuries in states where the regulation of this activity was minimal or nonexistent; and

The potential for harm to individuals participating in this activity likely increases in the absence of state regulation of these activities.

(2) It is the intent of the legislature to require bungee jumping operations to be regulated by the state to the extent necessary to protect the health and safety of individuals participating in this activity." [1993 c 203 § 1.]

67.42.020 Requirements—Operation of amusement ride or structure—Bungee jumping device inspection. Before operating any amusement ride or structure, the owner or operator shall:

(1) Obtain a permit pursuant to RCW 67.42.030;

(2) Have the amusement ride or structure inspected for safety at least once annually by an insurer, a person with whom the insurer has contracted, or a person who meets the qualifications set by the department and obtain from the insurer or person a written certificate that the inspection has been made and that the amusement ride or structure meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section. A bungee jumping device, including, but not limited to, the crane, tower, balloon or bridge, person lift basket, platforms, bungee cords, end attachments, anchors, carabiners or locking devices, harnesses, landing devices, and additional ride operation hardware shall be inspected for safety prior to beginning operation and annually by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices. The operator of the bungee jumping device shall obtain a written certificate which states that the required inspection has been made and the bungee jumping device meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section;

(3) Have and keep in effect an insurance policy in an amount not less than one million dollars per occurrence insuring: (a) The owner or operator; and (b) any municipality or county on whose property the amusement ride or structure stands, or any municipality or county which has contracted with the owner or operator against liability for injury to persons arising out of the use of the amusement ride or structure;

(4) File with the department the inspection certificate and insurance policy required by this section; and

(5) File with each sponsor, lessor, landowner, or other person responsible for an amusement structure or ride being offered for use by the public a certificate stating that the insurance required by subsection (3) of this section is in effect. [1993 c 203 § 3; 1986 c 86 § 1; 1985 c 262 § 2.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.025 Inspections and inspectors—Comparable regulation and comparable qualification. (1) An amusement ride that has been inspected in any state, territory, or possession of the United States that, in the discretion of the department, has a level of regulation comparable to this chapter, shall be deemed to meet the inspection requirement of this chapter.

(2) An amusement ride inspector who is authorized to inspect amusement rides in any state, territory, or possession of the United States, who, in the discretion of the department, has a level of qualifications comparable to those required under this chapter, shall be deemed qualified to inspect amusement rides under this chapter. [1986 c 86 § 2.]

67.42.030 Permit—Application—Decal. (1) Application for an operating permit to operate an amusement ride or structure shall be made on an annual basis by the owner or operator of the amusement ride or structure. The application shall be made on forms prescribed by the department and shall include the certificate required by RCW 67.42.020(2).

(2) The department shall issue a decal with each permit. The decal shall be affixed on or adjacent to the control panel of the amusement ride or structure in a location visible to the patrons of the ride or structure. [1985 c 262 § 3.]

67.42.040 Permit—Duration—Material modification of ride or structure—Bungee jumping device replacement, movement, purchase. (1) Except as provided in subsection (2) of this section or unless a shorter period is specified by the department, permits issued under RCW 67.42.030 are valid for a one-year period.

(2) If an amusement ride or structure is materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, the amusement ride or structure shall be subject to a new inspection under RCW 67.42.020 and the owner or operator shall apply for a new permit under RCW 67.42.030.

(3) If an amusement ride or structure for which a permit has been issued pursuant to RCW 67.42.030 is moved and installed in another place but is not materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, no new permit is required prior to the expiration of the permit.

(4) A bungee jumping device or a part of a device, including, but not limited to, the crane, person lift basket, mobile crane, balloon or balloon basket, anchor or anchor attachment structure, or landing device, that is replaced shall be reinspected by an insurer, a person with whom the insurer has contracted, or by a person authorized by the department to inspect bungee jumping devices, and the owner or operator of the device shall apply for a new permit under RCW 67.42.030.

(5) A bungee jumping operator shall have any bungee jumping device or structure that is moved and installed in another location reinspected by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices before beginning operation.

(6) Any new operator who purchases an existing bungee jumping device or structure must have the bungee jumping device inspected and permitted as required under RCW

67.42.020 before beginning operation. [1993 c 203 § 4; 1985 c 262 § 4.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.050 Rules—Orders to cease operation—Administrative proceedings. (1) The department shall adopt rules under chapter 34.05 RCW to administer this chapter. Such rules may exempt amusement rides or structures otherwise subject to this chapter if the amusement rides or structures are located on lands owned by [the] United States government or its agencies and are required to comply with federal safety standards at least equal to those under this chapter.

(2) The department may order in writing the cessation of the operation of an amusement ride or structure for which no valid permit is in effect or for which the owner or operator does not have an insurance policy as required by RCW 67.42.020.

(3) All proceedings relating to permits or orders to cease operation under this chapter shall be conducted pursuant to chapter 34.05 RCW. [1985 c 262 § 5.]

67.42.060 Fees. (1) The department may charge a reasonable fee not to exceed ten dollars for each permit issued under RCW 67.42.030. All fees collected by the department under this chapter shall be deposited in the state general fund. This subsection does not apply to permits issued under RCW 67.42.030 to operate a bungee jumping device.

(2) The department may charge a reasonable fee not to exceed one hundred dollars for each permit issued under RCW 67.42.030 to operate a bungee jumping device. Fees collected under this subsection shall be deposited in the state general fund for appropriation for the permitting and inspection of bungee jumping devices under this chapter. [1993 c 203 § 5; 1985 c 262 § 6.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.070 Penalty. Any person who operates an amusement ride or structure without complying with the requirements of this chapter is guilty of a gross misdemeanor. [1985 c 262 § 7.]

67.42.080 Counties and municipalities—Supplemental ordinances. Nothing contained in this chapter prevents a county or municipality from adopting and enforcing ordinances which relate to the operation of amusement rides or structures and supplement the provisions of this chapter. [1985 c 262 § 8.]

67.42.090 Bungee jumping—Permission. (1) Bungee jumping from a publicly owned bridge or publicly owned land is allowed only if permission has been granted by the government body that has jurisdiction over the bridge or land.

(2) Bungee jumping into publicly owned waters is allowed only if permission has been granted by the government body that has jurisdiction over the body of water.

(3) Bungee jumping from a privately owned bridge is allowed only if permission has been granted by the owner of the bridge. [1993 c 203 § 6.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.900 Severability—1985 c 262. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 262 § 10.]

67.42.901 Effective date—1985 c 262. This act shall take effect on January 1, 1986. [1985 c 262 § 11.]

Chapter 67.70 STATE LOTTERY

Sections	
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- 67.70.330 Enforcement powers of director—Office of the director designated law enforcement agency.
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 67.70.903 Severability—1982 2nd ex.s. c 7.
 67.70.904 Severability—1985 c 375.
 67.70.905 Effective date—1985 c 375.

Compulsive gamblers, information for: RCW 9.46.071.

67.70.010 Definitions. For the purposes of this chapter:

- (1) "Commission" means the state lottery commission established by this chapter;
- (2) "Director" means the director of the state lottery established by this chapter;
- (3) "Lottery" or "state lottery" means the lottery established and operated pursuant to this chapter;
- (4) "On-line game" means a lottery game in which a player pays a fee to a lottery retailer and selects a combination of digits, numbers, or symbols, type and amount of play, and receives a computer-generated ticket with those selections, and the lottery separately draws or selects the winning combination or combinations. [1994 c 218 § 3; 1987 c 511 § 1; 1982 2nd ex.s. c 7 § 1.]

Effective date—1994 c 218: See note following RCW 9.46.010.

67.70.030 State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum.

There is created the state lottery commission to consist of five members appointed by the governor with the consent of the senate. Of the initial members, one shall serve a term of two years, one shall serve a term of three years, one shall serve a term of four years, one shall serve a term of five years, and one shall serve a term of six years. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six-year terms. No member of the commission who has served a full six-year term is eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs.

The governor shall designate one member of the commission to serve as chairman at the governor's pleasure.

A majority of the members shall constitute a quorum for the transaction of business. [1982 2nd ex.s. c 7 § 3.]

67.70.040 Powers and duties of commission. The commission shall have the power, and it shall be its duty:

- (1) To promulgate such rules governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible and practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consonant with the dignity of the state and the general welfare of the people. Such rules shall include, but shall not be limited to, the following:

- (a) The type of lottery to be conducted which may include the selling of tickets or shares. The use of electronic or mechanical devices or video terminals which allow for individual play against such devices or terminals shall be prohibited. Approval of the legislature shall be required before entering any agreement with other state lotteries to conduct shared games;

- (b) The price, or prices, of tickets or shares in the lottery;

- (c) The numbers and sizes of the prizes on the winning tickets or shares;

- (d) The manner of selecting the winning tickets or shares;

- (e) The manner and time of payment of prizes to the holder of winning tickets or shares which, at the director's option, may be paid in lump sum amounts or installments over a period of years;

- (f) The frequency of the drawings or selections of winning tickets or shares. Approval of the legislature is required before conducting any on-line game in which the drawing or selection of winning tickets occurs more frequently than once every twenty-four hours;

- (g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

- (h) The method to be used in selling tickets or shares;

- (i) The licensing of agents to sell or distribute tickets or shares, except that a person under the age of eighteen shall not be licensed as an agent;

- (j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

- (k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among: (i) The payment of prizes to the holders of winning tickets or shares, which shall not be less than forty-five percent of the gross annual revenue from such lottery, (ii) transfers to the lottery administrative account created by RCW 67.70.260, and (iii) transfer to the state's general fund. Transfers to the state general fund shall be made in compliance with RCW 43.01.050;

- (l) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

- (2) To ensure that in each place authorized to sell lottery tickets or shares, on the back of the ticket or share, and in any advertising or promotion there shall be conspicuously displayed an estimate of the probability of purchasing a winning ticket.

- (3) To amend, repeal, or supplement any such rules from time to time as it deems necessary or desirable.

- (4) To advise and make recommendations to the director for the operation and administration of the lottery. [1994 c 218 § 4; 1991 c 359 § 1; 1988 c 289 § 801; 1987 c 511 § 2; 1985 c 375 § 1; 1982 2nd ex.s. c 7 § 4.]

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.042 Scratch games—Baseball stadium construction. The lottery commission shall conduct at least two but not more than four scratch games with sports themes per year. These games are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(4). [1997 c 220 § 207 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 104.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet,

election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

State contribution for baseball stadium limited: RCW 82.14.0486.

67.70.043 New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities. The lottery commission shall conduct new games that are in addition to any games conducted under RCW 67.70.042 and are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(5). No game may be conducted under this section before January 1, 1998. No game may be conducted under this section after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met, and no game is required to be conducted after the distributions cease under RCW 67.70.240(5).

For the purposes of this section, the lottery may accept and market prize promotions provided in conjunction with private-sector marketing efforts. [1997 c 220 § 205 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

67.70.050 Office of director created—Appointment—Salary—Duties. There is created the office of director of the state lottery. The director shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and shall receive such salary as is determined by the governor, but in no case may the director's salary be more than ninety percent of the salary of the governor. The director shall:

(1) Supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules of the commission.

(2) Appoint such deputy and assistant directors as may be required to carry out the functions and duties of his office: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such deputy and assistant directors.

(3) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such employees as are engaged in undercover audit or investigative work or security operations but shall apply to other employees appointed by the director, except as provided for in subsection (2) of this section.

(4) In accordance with the provisions of this chapter and the rules of the commission, license as agents to sell or distribute lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The director may require a bond from any licensed agent, in such amount as provided in the rules of the commission. Every licensed agent shall prominently

display his license, or a copy thereof, as provided in the rules of the commission. License fees may be established by the commission, and, if established, shall be deposited in the state lottery account created by RCW 67.70.230.

(5) Confer regularly as necessary or desirable with the commission on the operation and administration of the lottery; make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the lottery; and advise the commission and recommend such matters as the director deems necessary and advisable to improve the operation and administration of the lottery.

(6) Subject to the applicable laws relating to public contracts, enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the commission: PROVIDED, That nothing in this chapter authorizes the director to enter into public contracts for the regular and permanent administration of the lottery after the initial development and implementation.

(7) Certify quarterly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for the preceding quarter.

(8) Carry on a continuous study and investigation of the lottery throughout the state: (a) For the purpose of ascertaining any defects in this chapter or in the rules issued thereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this chapter or the rules may arise or be practiced, (b) for the purpose of formulating recommendations for changes in this chapter and the rules promulgated thereunder to prevent such abuses and evasions, (c) to guard against the use of this chapter and the rules issued thereunder as a cloak for the carrying on of professional gambling and crime, and (d) to ensure that this chapter and rules shall be in such form and be so administered as to serve the true purposes of this chapter.

(9) Make a continuous study and investigation of: (a) The operation and the administration of similar laws which may be in effect in other states or countries, (b) the operation of an additional game or games for the benefit of a particular program or purpose, (c) any literature on the subject which from time to time may be published or available, (d) any federal laws which may affect the operation of the lottery, and (e) the reaction of the citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

(10) Have all enforcement powers granted in chapter 9.46 RCW.

(11) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1998 c 245 § 106. Prior: 1987 c 511 § 3; 1987 c 505 § 57; 1986 c 158 § 21; 1985 c 375 § 2; 1982 2nd ex.s. c 7 § 5.]

67.70.055 Activities prohibited to officers, employees, and members. The director, deputy directors, any assistant directors, and employees of the state lottery and members of the lottery commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any lottery or other gambling activity regulated by the gambling commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of a lottery or other gambling activity, or the provision of independent consultant services in connection with a lottery or other gambling activity. [1987 c 511 § 4; 1986 c 4 § 2.]

67.70.060 Powers of director. (1) The director or the director's authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the director or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the director's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in chapter 34.05 RCW.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 175 § 123; 1982 2nd ex.s. c 7 § 6.]

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

67.70.070 Licenses for lottery sales agents—Factors—"Person" defined. No license as an agent to sell lottery tickets or shares may be issued to any person to

engage in business exclusively as a lottery sales agent. Before issuing a license the director shall consider such factors as: (1) The financial responsibility and security of the person and his business or activity, (2) the accessibility of his place of business or activity to the public, (3) the sufficiency of existing licenses to serve the public convenience, and (4) the volume of expected sales.

For purposes of this section, the term "person" means an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" does not mean any department, commission, agency, or instrumentality of the state, or any county or municipality or any agency or instrumentality thereof, except for retail outlets of the state liquor control board. [1982 2nd ex.s. c 7 § 7.]

67.70.080 License as authority to act. Any person licensed as provided in this chapter is hereby authorized and empowered to act as a lottery sales agent. [1982 2nd ex.s. c 7 § 8.]

67.70.090 Denial, suspension, and revocation of licenses. The director may deny an application for, or suspend or revoke, after notice and hearing, any license issued pursuant to this chapter. Such license may, however, be temporarily suspended by the director without prior notice, pending any prosecution, investigation, or hearing. A license may be suspended or revoked or an application may be denied by the director for one or more of the following reasons:

(1) Failure to account for lottery tickets received or the proceeds of the sale of lottery tickets or to file a bond if required by the director or to comply with the instructions of the director concerning the licensed activity;

(2) For any of the reasons or grounds stated in RCW 9.46.075 or violation of this chapter or the rules of the commission;

(3) Failure to file any return or report or to keep records or to pay any tax required by this chapter;

(4) Fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

(5) That the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, or that public convenience is adequately served by other licensees;

(6) A material change, since issuance of the license with respect to any matters required to be considered by the director under RCW 67.70.070.

For the purpose of reviewing any application for a license and for considering the denial, suspension, or revocation of any license the director may consider any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1982 2nd ex.s. c 7 § 9.]

67.70.100 Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment

by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability. (1) Except under subsection (2) of this section, no right of any person to a prize drawn is assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled.

(2)(a) The payment of all or part of the remainder of an annuity may be assigned to another person, pursuant to a voluntary assignment of the right to receive future annual prize payments, if the assignment is made pursuant to an appropriate judicial order of the Thurston county superior court or the superior court of the county in which the prize winner resides, if the winner is a resident of Washington state. If the prize winner is not a resident of Washington state, the winner must seek an appropriate order from the Thurston county superior court.

(b) If there is a voluntary assignment under (a) of this subsection, a copy of the petition for an order under (a) of this subsection and all notices of any hearing in the matter shall be served on the attorney general no later than ten days before any hearing or entry of any order.

(c) The court receiving the petition may issue an order approving the assignment and directing the director to pay to the assignee the remainder or portion of an annuity so assigned upon finding that all of the following conditions have been met:

(i) The assignment has been memorialized in writing and executed by the assignor and is subject to Washington law;

(ii) The assignor provides a sworn declaration to the court attesting to the facts that the assignor has had the opportunity to be represented by independent legal counsel in connection with the assignment, has received independent financial and tax advice concerning the effects of the assignment, and is of sound mind and not acting under duress, and the court makes findings determining so;

(iii) The assignee has provided a one-page written disclosure statement that sets forth in bold-face type, fourteen point or larger, the payments being assigned by amount and payment dates, the purchase price, or loan amount being paid; the interest rate or rate of discount to present value, assuming monthly compounding and funding on the contract date; and the amount, if any, of any origination or closing fees that will be charged to the lottery winner. The disclosure statement must also advise the winner that the winner should consult with and rely upon the advice of his or her own independent legal or financial advisors regarding the potential federal and state tax consequences of the transaction; and

(iv) The proposed assignment does not and will not include or cover payments or portions of payments subject to offsets pursuant to RCW 67.70.255 unless appropriate provision is made in the order to satisfy the obligations giving rise to the offset.

(d) The commission may intervene as of right in any proceeding under this section but shall not be deemed an indispensable or necessary party.

(3) The director will not pay the assignee an amount in excess of the annual payment entitled to the assignor.

(4) The commission may adopt rules pertaining to the assignment of prizes under this section, including recovery of actual costs incurred by the commission. The recovery of actual costs shall be deducted from the initial annuity payment made to the assignee.

(5) No voluntary assignment under this section is effective unless and until the national office of the federal internal revenue service provides a ruling that declares that the voluntary assignment of prizes will not affect the federal income tax treatment of prize winners who do not assign their prizes. If at any time the federal internal revenue service or a court of competent jurisdiction provides a determination letter, revenue ruling, other public ruling of the internal revenue service or published decision to any state lottery or state lottery prize winner declaring that the voluntary assignment of prizes will effect the federal income tax treatment of prize winners who do not assign their prizes, the director shall immediately file a copy of that letter, ruling, or published decision with the secretary of state. No further voluntary assignments may be allowed after the date the ruling, letter, or published decision is filed.

(6) The occurrence of any event described in subsection (5) of this section does not render invalid or ineffective assignments validly made and approved pursuant to an appropriate judicial order before the occurrence of any such event.

(7) The requirement for a disclosure statement in subsection (2)(c)(iii) of this section does not apply to any assignment agreement executed before April 21, 1997.

(8) The commission and the director shall be discharged of all further liability upon payment of a prize pursuant to this section. [1997 c 111 § 1; 1996 c 228 § 2; 1982 2nd ex.s. c 7 § 10.]

Effective date—1997 c 111: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 111 § 2.]

Intent—1996 c 228: "The Washington state lottery act under chapter 7, Laws of 1982 2nd ex. sess., provides, among other things, that the right of any person to a prize shall not be assignable, except to the estate of a deceased prize winner, or to a person designated pursuant to an appropriate judicial order. Current law and practices provide that those who win lotto jackpots are paid in annual installments over a period of twenty years. The legislature recognizes that some prize winners, particularly elderly persons, those seeking to acquire a small business, and others with unique needs, may not want to wait to be paid over the course of up to twenty years. It is the intent of the legislature to provide a restrictive means to accommodate those prize winners who wish to enjoy more of their winnings currently, without impacting the current fiscal structure of the Washington state lottery commission." [1996 c 228 § 1.]

67.70.110 Maximum price of ticket or share limited—Sale by other than licensed agent prohibited. A person shall not sell a ticket or share at a price greater than that fixed by rule of the commission. No person other than a licensed lottery sales agent shall sell lottery tickets, except that nothing in this section prevents any person from giving lottery tickets or shares to another as a gift. [1982 2nd ex.s. c 7 § 11.]

67.70.120 Sale to minor prohibited—Exception—Penalties. A ticket or share shall not be sold to any person under the age of eighteen, but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of

making a gift by a person eighteen years of age or older to a person less than that age. Any licensee who knowingly sells or offers to sell a lottery ticket or share to any person under the age of eighteen is guilty of a misdemeanor. In the event that a person under the age of eighteen years directly purchases a ticket in violation of this section, that person is guilty of a misdemeanor. No prize will be paid to such person and the prize money otherwise payable on the ticket will be treated as unclaimed pursuant to RCW 67.70.190. [1987 c 511 § 6; 1982 2nd ex.s. c 7 § 12.]

67.70.130 Prohibited acts—Penalty. A person shall not alter or forge a lottery ticket. A person shall not claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation. A person shall not conspire, aid, abet, or agree to aid another person or persons to claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation.

A violation of this section is a felony. [1982 2nd ex.s. c 7 § 13.]

67.70.140 Penalty for unlicensed activity. Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, is guilty of a felony. If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [1982 2nd ex.s. c 7 § 14.]

67.70.150 Penalty for false or misleading statement or entry or failure to produce documents. Whoever, in any application for a license or in any book or record required to be maintained or in any report required to be submitted, makes any false or misleading statement, or makes any false or misleading entry or wilfully fails to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection any book, record, or document required to be maintained or made by federal or state law is guilty of a gross misdemeanor. [1982 2nd ex.s. c 7 § 15.]

67.70.160 Penalty for violation of chapter—Exceptions. Any person who violates any provision of this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter is guilty of a class C felony, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 16.]

67.70.170 Penalty for violation of rules—Exceptions. Any person who violates any rule adopted pursuant to this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule adopted pursuant to this chapter is guilty of a gross misdemeanor, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 17.]

67.70.180 Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty. A ticket or share shall not be purchased by, and a prize shall not be paid to any member of the commission, the director, or an employee of the lottery or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member of the commission, the director or an employee of the lottery.

A violation of this section is a misdemeanor. [1987 c 511 § 7; 1982 2nd ex.s. c 7 § 18.]

67.70.190 Unclaimed prizes. Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, the prize shall be retained in the state lottery fund for further use as prizes, and all rights to the prize shall be extinguished. [1994 c 218 § 5; 1988 c 289 § 802; 1987 c 511 § 8; 1982 2nd ex.s. c 7 § 19.]

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.200 Deposit of moneys received by agents from sales—Power of director—Reports. The director, in his discretion, may require any or all lottery sales agents to deposit to the credit of the state lottery account in banks designated by the state treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less the amount, if any, retained as compensation for the sale of the tickets or shares, and to file with the director or his designated agents, reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require. The director may make such arrangements for any person, including a bank, to perform such functions, activities, or services in connection with the operation of the lottery as he or she may deem advisable pursuant to this chapter and the rules of the commission, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person. [1987 c 511 § 9; 1982 2nd ex.s. c 7 § 20.]

67.70.210 Other law inapplicable to sale of tickets or shares. No other law, including chapter 9.46 RCW, providing any penalty or disability for the sale of lottery tickets or any acts done in connection with a lottery applies to the sale of tickets or shares performed pursuant to this chapter. [1982 2nd ex.s. c 7 § 21.]

67.70.220 Payment of prizes to minor. If the person entitled to a prize is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize is under the age of eighteen years, and such prize is five thousand dollars or more, the director may direct payment to such minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor. The person so named as custodian shall have

the same duties and powers as a person designated as a custodian in a manner prescribed by the Washington uniform transfers to minors act, chapter 11.114 RCW, and for the purposes of this section the terms "adult member of a minor's family," "guardian of a minor," and "bank" shall have the same meaning as in chapter 11.114 RCW. The commission and the director shall be discharged of all further liability upon payment of a prize to a minor pursuant to this section. [1991 c 193 § 30; 1985 c 7 § 128; 1982 2nd ex.s. c 7 § 22.]

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

67.70.230 State lottery account created. There is hereby created and established a separate account, to be known as the state lottery account. Such account shall be managed, maintained, and controlled by the commission and shall consist of all revenues received from the sale of lottery tickets or shares, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. The account shall be a separate account outside the state treasury. No appropriation is required to permit expenditures and payment of obligations from the account. [1985 c 375 § 4; 1982 2nd ex.s. c 7 § 23.]

67.70.240 Use of moneys in state lottery account limited. The moneys in the state lottery account shall be used only:

- (1) For the payment of prizes to the holders of winning lottery tickets or shares;
- (2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;
- (3) For purposes of making deposits into the state's general fund;
- (4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;
- (5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;
- (6) For the purchase and promotion of lottery games and game-related services; and
- (7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Effective date—Severability—1987 c 513: See notes following RCW 18.85.310.

State contribution for baseball stadium limited: RCW 82.14.0486.

67.70.241 Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation. The person or entity responsible for operating a stadium and exhibition center as defined in RCW 36.102.010 shall promote the lottery with any combination of in-kind advertising, sponsorship, or prize promotions, valued at one million dollars annually beginning January 1998 and increased by four percent each year thereafter for the purpose of increasing lottery sales of games authorized under RCW 67.70.043. The content and value of the advertising sponsorship or prize promotions are subject to reasonable approval in advance by the lottery commission. The obligation of this section shall cease when the distributions under RCW 67.70.240(5) end, but not later than December 31, 2020. [1997 c 220 § 208 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

67.70.250 Methods for payment of prizes by installments. If the director decides to pay any portion of or all of the prizes in the form of installments over a period of years, the director shall provide for the payment of all such installments for any specific lottery game by one, but not both, of the following methods:

- (1) The director may enter into contracts with any financially responsible person or firm providing for the payment of such installments; or
- (2) The director may establish and maintain a reserve account into which shall be placed sufficient moneys for the director to pay such installments as they become due. Such reserve account shall be maintained as a separate and independent fund outside the state treasury. [1987 c 511 § 11; 1982 2nd ex.s. c 7 § 25.]

67.70.255 Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts. (1) Any state agency or

political subdivision that maintains records of debts owed to the state or political subdivision, or that the state is authorized to enforce or collect, may submit data processing tapes containing debt information to the lottery in a format specified by the lottery. State agencies or political subdivisions submitting debt information tapes shall provide updates on a regular basis at intervals not to exceed one month and shall be solely responsible for the accuracy of the information contained therein.

(2) The lottery shall include the debt information submitted by state agencies or political subdivisions in its validation and prize payment process. The lottery shall delay payment of a prize exceeding six hundred dollars for a period not to exceed two working days, to any person owing a debt to a state agency or political subdivision pursuant to the information submitted in subsection (1) of this section. The lottery shall contact the state agency or political subdivision that provided the information to verify the debt. The prize shall be paid to the claimant if the debt is not verified by the submitting state agency or political subdivision within two working days. If the debt is verified, the prize shall be disbursed pursuant to subsection (3) of this section.

(3) Prior to disbursement, any lottery prize exceeding six hundred dollars shall be set off against any debts owed by the prize winner to a state agency or political subdivision, or that the state is authorized to enforce or collect. [1986 c 83 § 2.]

Policy—1986 c 83: "The award of prizes by the state lottery is one of many functions of the state government. As such, the lottery prizes should be subject to debts owed to the state or that the state is authorized to enforce or collect. This policy expedites collections of obligations through interagency cooperation." [1986 c 83 § 1]

Effective date—1986 c 83: "This act shall take effect September 1, 1986." [1986 c 83 § 3.]

67.70.260 Lottery administrative account created.

There is hereby created the lottery administrative account in the state treasury. The account shall be managed, controlled, and maintained by the director. The legislature may appropriate from the account for the payment of costs incurred in the operation and administration of the lottery. [1985 c 375 § 6; 1982 2nd ex.s. c 7 § 26.]

67.70.270 Members of commission—

Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the director. [1984 c 287 § 101; 1982 2nd ex.s. c 7 § 27.]

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

67.70.280 Application of administrative procedure

act. The provisions of the administrative procedure act, chapter 34.05 RCW, shall apply to administrative actions taken by the commission or the director pursuant to this chapter. [1982 2nd ex.s. c 7 § 28.]

67.70.290 Post-audits by state auditor. The state auditor shall conduct an annual post-audit of all accounts and transactions of the lottery and such other special post-audits as he may be directed to conduct pursuant to chapter 43.09 RCW. [1982 2nd ex.s. c 7 § 29.]

67.70.300 Investigations by attorney general authorized. The attorney general may investigate violations of this chapter, and of the criminal laws within this state, by the commission, the director, or the director's employees, licensees, or agents, in the manner prescribed for criminal investigations in RCW 43.10.090. [1987 c 511 § 13; 1982 2nd ex.s. c 7 § 30.]

67.70.310 Management review by director of financial management. The director of financial management may conduct a management review of the commission's lottery operations to assure that:

(1) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter and the rules adopted under this chapter;

(2) The apportionment of total revenues accruing from the sale of lottery tickets or shares and from all other sources is consistent with this chapter;

(3) The manner and type of lottery being conducted, and the expenses incidental thereto, are the most efficient and cost-effective; and

(4) The commission is not unnecessarily incurring operating and administrative costs.

In conducting a management review, the director of financial management may inspect the books, documents, and records of the commission. Upon completion of a management review, all irregularities shall be reported to the attorney general, the joint legislative audit and review committee, and the state auditor. The director of financial management shall make such recommendations as may be necessary for the most efficient and cost-effective operation of the lottery. [1996 c 288 § 50; 1982 2nd ex.s. c 7 § 31.]

67.70.320 Verification by certified public accountant. The director of financial management shall select a certified public accountant to verify that:

(1) The manner of selecting the winning tickets or shares is consistent with this chapter; and

(2) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter. The cost of these services shall be paid from moneys placed within the lottery administrative account created in RCW 67.70.260. [1987 c 511 § 14; 1982 2nd ex.s. c 7 § 32.]

67.70.330 Enforcement powers of director—Office of the director designated law enforcement agency. The director shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, assistant directors, and each of the director's investigators, enforcement officers, and inspectors shall have the power to enforce

this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a warrant, any person or persons found in the act of violating any of the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth in this section, the office of the director shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this chapter and to obtain information from and provide information to all other law enforcement agencies. [1987 c 511 § 15; 1982 2nd ex.s. c 7 § 33.]

67.70.902 Construction—1982 2nd ex.s. c 7. This act shall be liberally construed to carry out the purposes and policies of the act. [1982 2nd ex.s. c 7 § 35.]

67.70.903 Severability—1982 2nd ex.s. c 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 2nd ex.s. c 7 § 40.]

67.70.904 Severability—1985 c 375. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 375 § 9.]

67.70.905 Effective date—1985 c 375. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect March 1, 1985. [1985 c 375 § 10.]

Reviser's note: 1985 c 375 was signed by the governor May 20, 1985.

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

- 68.04** Definitions.
- 68.05** Cemetery board.
- 68.20** Private cemeteries.
- 68.24** Cemetery property.
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Chapter 68.04 DEFINITIONS

Sections

- 68.04.020 "Human remains," "remains" defined.
- 68.04.030 "Cremated remains."
- 68.04.040 "Cemetery."
- 68.04.050 "Burial park."
- 68.04.060 "Mausoleum."
- 68.04.070 "Crematory."
- 68.04.080 "Columbarium."
- 68.04.090 "Crematory and columbarium."
- 68.04.100 "Interment."
- 68.04.110 "Cremation."
- 68.04.120 "Inurnment."
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- 68.04.140 "Burial."
- 68.04.150 "Grave."
- 68.04.160 "Crypt."
- 68.04.165 "Vault", "lawn crypt", "liner."
- 68.04.170 "Niche."
- 68.04.180 "Temporary receiving vault."
- 68.04.190 "Cemetery authority."

- 68.04.200 "Cemetery corporation", "cemetery association", "cemetery corporation or association."
- 68.04.210 "Cemetery business", "cemetery businesses", "cemetery purposes."
- 68.04.220 "Directors," "governing body."
- 68.04.230 "Lot", "plot", "interment plot."
- 68.04.240 "Plot owner," "owner," "lot proprietor."

68.04.020 "Human remains," "remains" defined.

"Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition except cremated remains. [1977 c 47 § 1; 1943 c 247 § 2; Rem. Supp. 1943 § 3778-2.]

Short title—1943 c 247: "This act shall be known as the 'General Cemetery Act.'" [1943 c 247 § 1.]

Severability—1943 c 247: "If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act." [1943 c 247 § 147.]

The annotations apply to 1943 c 247, the general cemetery act, which was codified as RCW 68.04.020 through 68.04.240, 68.08.010 through 68.08.030, 68.08.120 through 68.08.220, 68.08.240, 68.20.010 through 68.20.100, 68.24.010 through 68.24.180, 68.28.010 through 68.28.070, 68.32.010 through 68.32.170, 68.36.010 through 68.36.100, 68.40.010 through 68.40.090, 68.44.010 through 68.44.170, and 68.48.040 through 68.48.090.

68.04.030 "Cremated remains." "Cremated remains" means a human body after cremation in a crematory. [1977 c 47 § 2; 1943 c 247 § 3; Rem. Supp. 1943 § 3778-3.]

68.04.040 "Cemetery." "Cemetery" means: (1) Any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt interments.
- (c) A columbarium, for permanent cinerary interments;

or

(2) For the purposes of chapter 68.60 RCW only, "cemetery" means any burial site, burial grounds, or place where five or more human remains are buried. Unless a cemetery is designated as a parcel of land identifiable and unique as a cemetery within the records of the county assessor, a cemetery's boundaries shall be a minimum of ten feet in any direction from any burials therein. [1990 c 92 § 7; 1979 c 21 § 1; 1943 c 247 § 4; Rem. Supp. § 3778-4.]

68.04.050 "Burial park." "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 5; Rem. Supp. 1943 § 3778-5.]

68.04.060 "Mausoleum." "Mausoleum" means a structure or building for the entombment of human remains

in crypts in a place used, or intended to be used, and dedicated, for cemetery purposes. [1979 c 21 § 2; 1943 c 247 § 6; Rem. Supp. 1943 § 3778-6.]

68.04.070 "Crematory." "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains. [1943 c 247 § 7; Rem. Supp. 1943 § 3778-7.]

68.04.080 "Columbarium." "Columbarium" means a structure, room, or other space in a building or structure containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 8; Rem. Supp. 1943 § 3778-8.]

68.04.090 "Crematory and columbarium." "Crematory and columbarium" means a building or structure containing both a crematory and columbarium. [1943 c 247 § 9; Rem. Supp. 1943 § 3778-9.]

68.04.100 "Interment." "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 10; Rem. Supp. 1943 § 3778-10.]

68.04.110 "Cremation." "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory in such a manner that the largest dimension of any remaining particle does not exceed five millimeters: PROVIDED, That if a person entitled to possession of such remains under the provisions of RCW 68.50.270 is going to place the cremated remains in a cemetery, mausoleum, columbarium, or building devoted exclusively to religious purposes, the five millimeter dimension requirement shall not apply. [1987 c 331 § 1; 1977 c 47 § 3; 1943 c 247 § 11; Rem. Supp. 1943 § 3778-11.]

Effective date—1987 c 331: See RCW 68.05.900.

68.04.120 "Inurnment." "Inurnment" means placing cremated remains in an urn or vault and placing it in a niche. [1943 c 247 § 12; Rem. Supp. 1943 § 3778-12.]

68.04.130 "Entombment." "Entombment" means the placement of human remains in a crypt or vault. [1943 c 247 § 13; Rem. Supp. 1943 § 3778-13.]

68.04.140 "Burial." "Burial" means the placement of human remains in a grave. [1943 c 247 § 14; Rem. Supp. 1943 § 3778-14.]

68.04.150 "Grave." "Grave" means a space of ground in a burial park, used or intended to be used, for burial. [1943 c 247 § 15; Rem. Supp. 1943 § 3778-15.]

68.04.160 "Crypt." "Crypt" means a space in a mausoleum of sufficient size, used or intended to be used, to

entomb uncremated human remains. [1979 c 21 § 3; 1943 c 247 § 16; Rem. Supp. 1943 § 3778-16.]

68.04.165 "Vault", "lawn crypt", "liner." "Vault", "lawn crypt" or "liner" means any container which is buried in the ground and into which human remains are placed in the burial process. [1979 c 21 § 4.]

68.04.170 "Niche." "Niche" means a space in a columbarium or urn garden used, or intended to be used, for inurnment of cremated human remains. [1943 c 247 § 17; Rem. Supp. 1943 § 3778-17.]

68.04.180 "Temporary receiving vault." "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains. [1943 c 247 § 18; Rem. Supp. 1943 § 3778-18.]

68.04.190 "Cemetery authority." "Cemetery authority" includes cemetery corporation, association, corporation sole, or other person owning or controlling cemetery lands or property. [1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

68.04.200 "Cemetery corporation", "cemetery association", "cemetery corporation or association." "Cemetery corporation", "cemetery association", or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole. [1943 c 247 § 20; Rem. Supp. 1943 § 3778-20.]

68.04.210 "Cemetery business", "cemetery businesses", "cemetery purposes." "Cemetery business", "cemetery businesses", and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property. [1943 c 247 § 21; Rem. Supp. 1943 § 3778-21.]

68.04.220 "Directors," "governing body." "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association. [1943 c 247 § 22; Rem. Supp. 1943 § 3778-22.]

68.04.230 "Lot", "plot", "interment plot." "Lot", "plot", or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches. [1943 c 247 § 23; Rem. Supp. 1943 § 3778-23.]

68.04.240 "Plot owner", "owner", "lot proprietor." "Plot owner", "owner", or "lot proprietor" means any person in whose name an interment plot stands of record as owner,

in the office of a cemetery authority. [1943 c 247 § 24; Rem. Supp. 1943 § 3778-24.]

Chapter 68.05 CEMETERY BOARD

Sections

- 68.05.010 Definitions.
- 68.05.020 "Board" defined.
- 68.05.024 "Department" defined.
- 68.05.028 "Director" defined.
- 68.05.030 "Endowment care," "endowed care" defined.
- 68.05.040 Cemetery board created—Appointments—Terms.
- 68.05.050 Qualifications of members.
- 68.05.060 Compensation and travel expenses.
- 68.05.080 Meetings.
- 68.05.090 Administration and enforcement of title.
- 68.05.095 Officers—Executive secretary.
- 68.05.100 Rules and regulations.
- 68.05.105 Authority of the board.
- 68.05.115 Sale or transfer of cemetery authority or creation of a new cemetery—Application for new certificate of authority—Compliance required—Penalty.
- 68.05.120 Actions to enforce law—Attorney general.
- 68.05.150 Examination of funds—Powers, duties.
- 68.05.155 Prearrangement sales license.
- 68.05.160 Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contract provisions.
- 68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection.
- 68.05.173 Revocation, suspension of certificate or prearrangement sales license.
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- 68.05.180 Annual report of authority—Contents—Verification.
- 68.05.185 Requirements as to crematories.
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- 68.05.195 Burial or disposal of cremated remains—Permit or endorsement required.
- 68.05.205 Fees.
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- 68.05.245 Crematory permits or endorsements—Terms—Fees.
- 68.05.254 Examination of endowment funds and prearrangement trust funds—Expense—Location.
- 68.05.259 Examination expense—Effect of refusal to pay—Disposition.
- 68.05.285 "Cemetery fund."
- 68.05.290 Board members' immunity from suits.
- 68.05.300 Certificates of authority or sales licenses—Grounds for termination.
- 68.05.310 Certificates of authority or sales licenses—Notice, procedures for board action.
- 68.05.320 Board action against authorities—Administrative procedures.
- 68.05.330 Violation—Penalty—Unfair practice—Other laws applicable.
- 68.05.340 Board action against authorities—Cease and desist orders.
- 68.05.350 Delaying board action pending administrative proceedings.
- 68.05.360 Board action against authorities—Hearing location—Decision—Review.
- 68.05.370 Board action against authorities—Enforcement of orders.
- 68.05.390 Permit or endorsement required for cremation—Penalty.
- 68.05.400 Exemptions from chapter.
- 68.05.900 Effective date—1987 c 331

68.05.010 Definitions. The definitions in chapter 68.04 RCW are applicable to this chapter and govern the

meaning of terms used herein, except as otherwise provided expressly or by necessary implication. [1953 c 290 § 26.]

Short title—1953 c 290: "This act shall be known as 'The Cemetery Act.'" [1953 c 290 § 55.]

68.05.020 "Board" defined. The term "board" used in this chapter means the cemetery board. [1953 c 290 § 27.]

68.05.024 "Department" defined. "Department" used in this chapter means the department of licensing. [1987 c 331 § 2.]

68.05.028 "Director" defined. "Director" used in this chapter means the director of licensing. [1987 c 331 § 3.]

68.05.030 "Endowment care," "endowed care" defined. The terms "endowment care" or "endowed care" used in this chapter shall include special care, care, or maintenance and all funds held for or represented as maintenance funds. [1987 c 331 § 4; 1953 c 290 § 28.]

68.05.040 Cemetery board created—Appointments—Terms. A cemetery board is created to consist of six members to be appointed by the governor. Appointments shall be for four-year terms. Each member shall hold office until the expiration of the term for which the member is appointed or until a successor has been appointed and qualified. [1987 c 331 § 5; 1977 ex.s. c 351 § 1; 1953 c 290 § 31.]

Severability—1977 ex.s. c 351: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 351 § 7.]

68.05.050 Qualifications of members. Three members of the board shall be persons who have had experience in this state in the active administrative management of a cemetery authority or as a member of the board of directors thereof. Two members of the board shall be persons who have legal, accounting, or other professional experience which relates to the duties of the board. The sixth member of the board shall represent the general public and shall not have a financial interest in the cemetery business. [1979 c 21 § 5; 1977 ex.s. c 351 § 2; 1953 c 290 § 32.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.060 Compensation and travel expenses. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 102; 1975-'76 2nd ex.s. c 34 § 156; 1953 c 290 § 33.]

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

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

68.05.080 Meetings. The board shall meet at least twice a year in order to conduct its business and may meet at such other times as it may designate. The chair, the director, or a majority of board members may call a meeting.

The board may meet at any place within this state. [1987 c 331 § 6; 1953 c 290 § 35.]

68.05.090 Administration and enforcement of title.

The board shall enforce and administer the provisions of chapters 68.04 through 68.50 RCW, subject to provisions of *RCW 68.05.280. The board may adopt and amend bylaws establishing its organization and method of operation. In addition to enforcement of this chapter the board shall enforce chapters 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, and 68.50 RCW. The board may refer such evidence as may be available concerning violations of chapters 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, and 68.50 RCW to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action the board might commence, bring an action in the name of the board against any person to restrain and prevent the doing of any act or practice prohibited or declared unlawful in chapters 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, or 68.50 RCW and shall have standing to seek enforcement of said provisions in the superior court of the state of Washington for the county in which the principal office of the cemetery authority is located. [1987 c 331 § 7; 1979 c 21 § 6; 1953 c 290 § 39.]

***Reviser's note:** RCW 68.05.280 was recodified as RCW 68.05.400 pursuant to 1987 c 331 § 89.

68.05.095 Officers—Executive secretary. The board shall elect annually a chairman and vice chairman and such other officers as it shall determine from among its members. The director, in consultation with the board, may employ and prescribe the duties of the executive secretary. The executive secretary shall have a minimum of five years' experience in cemetery management unless this requirement is waived by the board. [1987 c 331 § 8; 1953 c 290 § 34. Formerly RCW 68.05.070.]

68.05.100 Rules and regulations. The board may establish necessary rules and regulations for the enforcement of this title and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this title. Rules regulating the cremation of human remains and establishing permit requirements shall be adopted in consultation with the state board of funeral directors and embalmers. [1993 c 43 § 3; 1987 c 331 § 9; 1985 c 402 § 8; 1953 c 290 § 36.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.05.105 Authority of the board. The board has the following authority:

- (1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this title;
- (2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings;

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

(4) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this title;

(5) To compel attendance of witnesses at hearings;

(6) In the course of investigating a complaint, to conduct practice reviews;

(7) To take emergency action pending proceedings by the board;

(8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the board shall make the final decision;

(9) To use consultants or individual members of the board to assist in the direction of investigations and issuance of statements of charges. However, those board members shall not subsequently participate in the hearing of the case;

(10) To enter into contracts for professional services determined to be necessary for adequate enforcement of this title;

(11) To contract with persons or organizations to provide services necessary for the monitoring and supervision of licensees, or authorities who are for any authorized purpose subject to monitoring by the board;

(12) To adopt standards of professional conduct or practice;

(13) To grant or deny authorities or license applications, and in the event of a finding of unprofessional conduct by an applicant, authority, or license holder, to impose any sanction against a license applicant, authority, or license holder provided by this title;

(14) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant, holder of an authority to operate, or license holder shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(15) To revoke the license or authority;

(16) To suspend the license or authority for a fixed or indefinite term;

(17) To restrict or limit the license or authority;

(18) To censure or reprimand;

(19) To cause compliance with conditions of probation for a designated period of time;

(20) To fine for each violation of this title, not to exceed one thousand dollars per violation. Funds received shall be placed in the cemetery account;

(21) To order corrective action.

Any of the actions under this section may be totally or partly stayed by the board. In determining what action is appropriate, the board must first consider what sanctions are necessary to protect or compensate the public. All costs associated with compliance with orders issued under this section are the obligation of the license or authority holder or applicant. [1987 c 331 § 10.]

68.05.115 Sale or transfer of cemetery authority or creation of a new cemetery—Application for new certificate of authority—Compliance required—Penalty. Prior to the sale or transfer of ownership or control of any cemetery authority or the creation of a new cemetery, any person, corporation or other legal entity desiring to acquire such ownership or control or desiring to create a new cemetery shall apply in writing to the board for a new certificate of authority to operate a cemetery and shall comply with all provisions of Title 68 RCW relating to applications for, and the basis for granting, an original certificate of authority. The board shall, in addition, enter any order deemed necessary for the protection of all endowment care funds and/or prearrangement trust fund during such transfer. As a condition of applying for a new certificate of authority, the entity desiring to acquire such ownership or control must agree to be bound by all then existing prearrangement contracts and the board shall enter that agreement as a condition of the transfer. Persons and business entities selling and persons and business entities purchasing ownership or control of a cemetery authority shall each verify and attest to an endowment care fund report and/or a prearrangement trust fund report showing the status of such funds on the date of the sale on a written report form prescribed by the board. Such reports shall be considered part of the application for authority to operate. Failure to comply with this section shall be a gross misdemeanor and any sale or transfer in violation of this section shall be void. [1987 c 331 § 11; 1979 c 21 § 11; 1973 1st ex.s. c 68 § 17; 1969 ex.s. c 99 § 5. Formerly RCW 68.05.255.]

68.05.120 Actions to enforce law—Attorney general.

The board is authorized to bring actions to enforce the provisions of the law subject to its jurisdiction, in which actions it shall be represented by the attorney general. [1953 c 290 § 38.]

68.05.150 Examination of funds—Powers, duties.

In making such examination the board:

(1) Shall have free access to the books and records relating to the endowment care funds, their collection and investment, and the number of graves, crypts, and niches under endowment care;

(2) Shall inspect and examine the endowment care funds to determine their condition and the existence of the investments;

(3) Shall ascertain if the cemetery authority has complied with all the laws applicable to endowment care funds;

(4) Shall have free access to all records required to be maintained pursuant to this chapter and to chapter 68.46 RCW with respect to prearrangement merchandise or services, unconstructed crypts or niches, or undeveloped graves; and

(5) Shall ascertain if the cemetery authority has complied with the laws applicable to prearrangement trust funds. [1979 c 21 § 8; 1973 1st ex.s. c 68 § 14; 1953 c 290 § 44.]

68.05.155 Prearrangement sales license. To enter into prearrangement contracts as defined in RCW 68.46.010, a cemetery authority shall have a valid prearrangement sales

license. To apply for a prearrangement sales license, a cemetery authority shall:

(1) File with the board its request showing:

(a) Its name, location, and organization date;

(b) The kinds of cemetery business or merchandise it proposes to transact;

(c) A statement of its current financial condition, management, and affairs on a form satisfactory to or furnished by the board; and

(d) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter; and

(2) Deposit with the department the fees required by this chapter to be paid for filing the accompanying documents, and for the prearrangement sales license, if granted. [1987 c 331 § 12; 1979 c 21 § 28. Formerly RCW 68.46.140.]

68.05.160 Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contract provisions. If any examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment care funds the minimum amounts required by this title, or if the board finds that the cemetery authority has failed to comply with the requirements of this chapter and chapter 68.46 RCW with respect to prearrangement contracts, merchandise, or services, unconstructed crypts or niches or undeveloped graves, or prearrangement trust funds, the board shall require such cemetery authority to comply with this chapter or with chapter 68.40 or 68.46 RCW, as the case may be. [1979 c 21 § 9; 1973 1st ex.s. c 68 § 15; 1953 c 290 § 45.]

68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection.

(1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it shall by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located and the court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

(a) Transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

(b) Failed to reinvest endowment care funds in accordance with a board order issued under subsection one of this section; or,

(c) Invested endowment care funds in violation of this title; or,

(d) Taken action or failed to take action to preserve and protect the endowment care funds, evidencing a lack of concern therefor; or,

(e) Become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(f) Is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

(g) Taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules, regulations and orders of the board.

(3) Whenever the board or its representative has reason to believe that endowment care funds or prearrangement trust funds are in danger of being lost or dissipated during the time required for notice and hearing, it may immediately impound or seize documents, financial instruments, or other trust fund assets, or take other actions deemed necessary under the circumstances for the preservation and protection of endowment care funds or prearrangement trust funds, including, but not limited to, immediate substitutions of trustees. [1987 c 331 § 23; 1969 ex.s. c 99 § 1; 1953 c 290 § 46.]

68.05.173 Revocation, suspension of certificate or prearrangement sales license. Upon violation of any of the provisions of this title, the board may revoke or suspend the certificate of authority and may revoke, suspend, or terminate the prearrangement sales license of any cemetery authority. [1987 c 331 § 24; 1953 c 290 § 49. Formerly RCW 68.05.250.]

68.05.175 Permit or endorsement required for cremation—Regulation of affiliated and nonaffiliated crematories. A permit or endorsement issued by the cemetery board or under chapter 18.39 RCW is required in order to operate a crematory or conduct a cremation. Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board of funeral directors and embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board. [1987 c 331 § 13; 1985 c 402 § 4. Formerly RCW 68.05.257.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.05.180 Annual report of authority—Contents—Verification. Each cemetery authority in charge of cemetery endowment care funds shall annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file with the board a written report in form and content prescribed by the board.

These reports shall be verified by the president or vice president, one other officer of the cemetery authority, the accountant or auditor preparing the same, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [1979 c 21 § 10; 1977 ex.s. c 351 § 3; 1973 1st ex.s. c 68 § 16; 1953 c 290 § 40.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.185 Requirements as to crematories. No crematory shall hereafter be constructed or established unless the crematory is of fireproof construction and there is in connection therewith a fireproof columbarium, a fireproof mausoleum, a fireproof room for temporary care of cremated remains or a burial park amply equipped at all times for the interment of remains of bodies cremated at the crematory. No crematorium may be operated without a valid permit or endorsement issued in accordance with RCW 68.05.175 or chapter 18.39 RCW. Nothing herein contained shall prevent existing crematories from being repaired, altered, or reconstructed. Nothing in this title shall prohibit the cremation of human remains in existing crematories, nor the temporary storage of cremated remains. [1987 c 331 § 14; 1943 c 247 § 56; Rem. Supp. 1943 § 3778-56. Formerly RCW 68.48.050.]

68.05.190 Examination of reports. The board shall examine the reports filed with it as to their compliance with the requirements of the law. [1953 c 290 § 41.]

68.05.195 Burial or disposal of cremated remains—Permit or endorsement required. Any person other than persons defined in RCW 68.50.160 who buries or otherwise disposes of cremated remains by land, by air, or by sea shall have a permit or endorsement issued in accordance with RCW 68.05.100 and shall be subject to that section. [1987 c 331 § 15.]

68.05.205 Fees. The director with the consent of the cemetery board shall set all fees for chapters 68.05, 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, and 68.46 RCW in accordance with RCW 43.24.086, including fees for licenses, certificates, regulatory charges, permits, or endorsements, and the department shall collect the fees. [1993 c 43 § 4; 1987 c 331 § 16; 1983 1st ex.s. c 5 § 1; 1977 ex.s. c 351 § 4; 1969 ex.s. c 99 § 4; 1953 c 290 § 51. Formerly RCW 68.05.230.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

Severability—1983 1st ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 5 § 3.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.210 Proof of applicant's compliance with law, rules, etc., financial responsibility and reputation. The board may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable to it. The board shall also require proof that the applicant and its officers and directors are financially responsible, trustworthy and have good personal and business reputations, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state. [1969 ex.s. c 99 § 2; 1953 c 290 § 48.]

68.05.215 Certificates—Regulatory charges, when payable—Duration—Suspension, restoration—Transferability. The regulatory charges for cemetery

certificates at all periods of the year are the same as provided in this chapter. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold. Cemetery certificates shall not be transferable. Failure to pay the regulatory charge fixed by the director prior to the first day of February for any year automatically shall suspend the certificate of authority. Such certificate may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 17; 1969 ex.s. c 99 § 3; 1953 c 290 § 50. Formerly RCW 68.05.220.]

68.05.225 Sales licenses—Terms—Fees. All prearrangement sales licenses issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold.

The director, in accordance with RCW 43.24.086, shall set and the department shall collect in advance the fees required for licensing.

Failure to pay the regulatory charge fixed by the director before the first day of February for any year shall automatically suspend the license. Such license may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 18; 1979 c 21 § 29. Formerly RCW 68.46.180.]

68.05.235 Financial statements—Failure to file. (1) Each authorized cemetery authority shall within ninety days after the close of its accounting year file with the board upon the board's request a true and accurate statement of its financial condition, transactions, and affairs for the preceding year. The statement shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The board shall suspend or revoke the prearrangement sales license of any cemetery authority which fails to comply with the request. [1987 c 331 § 19; 1979 c 21 § 37. Formerly RCW 68.46.095.]

68.05.240 Interment, certificate of authority required—Penalty. It shall be a misdemeanor for any cemetery authority to make any interment without a valid, subsisting, and unsuspended certificate of authority. Each interment shall be a separate violation. [1953 c 290 § 52.]

68.05.245 Crematory permits or endorsements—Terms—Fees. All crematory permits or endorsements issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority which operates such crematory is transferred or sold.

The director shall set and the department shall collect in advance the fees required for licensing.

Failure to pay the regulatory charge fixed by the director before the first day of February for any year shall

automatically suspend the permit or endorsement. Such permit or endorsement may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 20.]

68.05.254 Examination of endowment funds and prearrangement trust funds—Expense—Location. (1) The board shall examine the endowment care and prearrangement trust fund or funds of a cemetery authority:

(a) Whenever it deems necessary, but at least once every three years after the original examination except where the cemetery authority is either required by the board to, or voluntarily files an annual financial report for the fund certified by a certified public accountant or a licensed public accountant in accordance with generally accepted auditing standards;

(b) One year following the issuance of a new certificate of authority;

(c) Whenever the cemetery authority in charge of endowment care or prearrangement trust fund or funds fails after reasonable notice from the board to file the reports required by this chapter; or

(d) Whenever it is requested by verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this title, or whenever it is requested by verified petition signed by twenty-five purchasers or beneficiaries of prearrangement merchandise or services alleging that the prearrangement trust funds are not in compliance with this title, in either of which cases, the examination shall be at the expense of the petitioners.

(2) The expense of the endowment care and prearrangement trust fund examination as provided in subsection (1)(a) and (b) of this section shall be paid by the cemetery authority. Such examination shall be privately conducted in the principal office of the cemetery authority.

(3) The requirements that examinations be conducted once every three years and that they be conducted in the principal office of the cemetery authority do not apply to any endowment care or prearrangement fund that is less than twenty-five thousand dollars. The board shall, at its discretion, decide when and where the examinations shall take place. [1987 c 331 § 21; 1979 c 21 § 7; 1973 1st ex.s. c 68 § 12; 1953 c 290 § 42. Formerly RCW 68.05.130.]

68.05.259 Examination expense—Effect of refusal to pay—Disposition. If any cemetery authority refuses to pay any examination expenses within thirty days of completion of the examination or refuses to pay certain examination expenses in advance as required by the department for cause, the board shall revoke any existing certificate of authority. Examination expenses incurred in conjunction with a transfer of ownership of a cemetery shall be paid by the selling entity. All examination expense moneys collected by the department shall be paid to the department. [1987 c 331 § 22; 1973 1st ex.s. c 68 § 13; 1953 c 290 § 43. Formerly RCW 68.05.140.]

68.05.285 "Cemetery fund." There shall be, in the office of the state treasurer, a fund to be known and designated as the "cemetery fund." All regulatory fees or other moneys to be paid under this chapter, unless provision be made otherwise, shall be paid at least once a month to the

state treasurer to be credited to the cemetery fund. All moneys credited to the cemetery fund shall be used, when appropriated by the legislature, by the cemetery board to carry out the provisions of this chapter. [1953 c 290 § 29. Formerly RCW 68.05.270.]

Cemetery fund abolished and moneys transferred to cemetery account in state treasury: RCW 43.79.330 through 43.79.334.

68.05.290 Board members' immunity from suits.

Members of the board shall be immune from suit in any action, civil or criminal, based upon any official acts performed in good faith as members of such board, and the state shall defend, indemnify, and hold the members of the board harmless from all claims or suits arising in any manner from such acts. Expenses incurred by the state under this section shall be paid from the general fund. [1979 c 21 § 12.]

68.05.300 Certificates of authority or sales licenses—Grounds for termination. The board may revoke, suspend, or terminate a certificate of authority or prearrangement sales license if a cemetery authority:

(1) Fails to comply with any provision of this chapter or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts would be hazardous to purchasers or beneficiaries and the people of this state;

(3) Refuses to be examined, or refuses to submit to examination or to produce its accounts, records, and files for examination by the board when required;

(4) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued operation hazardous to purchasers, beneficiaries, or the public; or

(5) Is found by the board to use false, misleading, or deceptive advertisements or sales methods. [1987 c 331 § 25; 1979 c 21 § 30. Formerly RCW 68.46.190.]

68.05.310 Certificates of authority or sales licenses—Notice, procedures for board action. The board or its authorized representative shall give a cemetery authority notice of its intention to suspend, revoke, or refuse to renew a certificate of authority or a prearrangement sales license, and shall grant the cemetery authority a hearing, in the manner required for adjudicative proceedings under chapter 34.05 RCW, the Administrative Procedure Act, before the order of suspension, revocation, or refusal may become effective.

No cemetery authority whose prearrangement sales license has been suspended, revoked, or refused shall be authorized to enter into prearrangement contracts. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund. [1989 c 175 § 124; 1987 c 331 § 26; 1979 c 21 § 31. Formerly RCW 68.46.200.]

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

68.05.320 Board action against authorities—Administrative procedures. (1) The board or its authorized

representative may issue and serve upon a cemetery authority a notice of charges if in the opinion of the board or its authorized representative the cemetery authority:

(a) Is engaging in or has engaged in practices likely to endanger the future delivery of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves;

(b) Is violating or has violated any statute of the state of Washington or any rule of the board; or

(c) Is about to do an act prohibited in (1)(a) or (1)(b) of this section when the opinion is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the cemetery authority. The hearing shall be set not earlier than ten nor later than thirty days after service of the notice unless a later date is set by the board or its authorized representative at the request of the cemetery authority.

Unless the cemetery authority appears at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of a cease and desist order. In the event of this consent or if upon the record made at the hearing the board finds that any violation or practice specified in the notice of charges has been established, the board may issue and serve upon the cemetery authority an order to cease and desist from the violation or practice. The order may require the cemetery authority and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the cemetery authority to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after service of the order upon the cemetery authority except that a cease and desist order issued upon consent shall become effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(4) The powers of the board under this section are in addition to the power of the board to refuse to renew or to revoke or suspend a cemetery authority's prearrangement sales license. [1979 c 21 § 32. Formerly RCW 68.46.220.]

68.05.330 Violation—Penalty—Unfair practice—Other laws applicable. Unless specified otherwise in this title, any person who violates or aids or abets any person in the violation of any of the provisions of this title shall be guilty of a class C felony punishable under chapter 9A.20 RCW. A violation shall constitute an unfair practice under chapter 19.86 RCW and shall be grounds for revocation of the certificate of authority under this chapter or revocation of the prearrangement sales license under this chapter. Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1987 c 331 § 27; 1984 c 53 § 6; 1979 c 21 § 39. Formerly RCW 68.46.210.]

68.05.340 Board action against authorities—Cease and desist orders. Whenever the board or its authorized

representative determines that a cemetery authority is in violation of this title or that the continuation of acts or practices of the cemetery authority is likely to cause insolvency or substantial dissipation of assets or earnings of the cemetery authority's endowment care or prearrangement trust fund or to otherwise seriously prejudice the interests of the purchasers or beneficiaries of prearrangement contracts, the board, or its authorized representative, may issue a temporary order requiring the cemetery authority to cease and desist from the violation or practice. The order shall become effective upon service on the cemetery authority and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 68.05.350 or until the board dismisses the charges specified in the notice under RCW 68.05.320 or until the effective date of a cease and desist order issued against the cemetery authority under RCW 68.05.320. [1987 c 331 § 28; 1979 c 21 § 33. Formerly RCW 68.46.230.]

68.05.350 Delaying board action pending administrative proceedings. Within ten days after a cemetery authority has been served with a temporary cease and desist order, the cemetery authority may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending completion of the administrative proceedings under RCW 68.05.320. [1987 c 331 § 29; 1979 c 21 § 34. Formerly RCW 68.46.240.]

68.05.360 Board action against authorities—Hearing location—Decision—Review. Any administrative hearing under RCW 68.05.320 may be held at such place as is designated by the board and shall be conducted in accordance with chapter 34.05 RCW.

Within sixty days after the hearing the board shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 68.05.320.

Review of the decision shall be as provided in chapter 34.05 RCW. [1987 c 331 § 30; 1979 c 21 § 35. Formerly RCW 68.46.250.]

68.05.370 Board action against authorities—Enforcement of orders. The board may apply to the superior court of the county of the principal place of business of the cemetery authority affected for enforcement of any effective and outstanding order issued under RCW 68.05.320 or 68.05.340, and the court shall have jurisdiction to order compliance with the order. [1987 c 331 § 31; 1979 c 21 § 36. Formerly RCW 68.46.260.]

68.05.390 Permit or endorsement required for cremation—Penalty. Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a violation. [1987 c 331 § 32.]

68.05.400 Exemptions from chapter. The provisions of this chapter do not apply to any of the following:

(1) Nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for

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an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built; or

(2) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1979 c 21 § 13; 1961 c 133 § 1; 1953 c 290 § 30. Formerly RCW 68.05.280.]

68.05.900 Effective date—1987 c 331. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 331 § 91.]

Chapter 68.20 PRIVATE CEMETERIES

Sections

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68.20.010 Incorporation required. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation duly organized for that purpose. [1943 c 247 § 42; Rem. Supp. 1943 § 3778-42.]

68.20.020 Corporations, how organized. Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in chapter 24.03 RCW. A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington. [1983 c 3 § 167; 1943 c 247 § 43; Rem. Supp. 1943 § 3778-43. Prior: 1899 c 33 § 1; 1856-7 p 28 § 1.]

68.20.030 Powers of existing corporations enlarged. The powers, privileges and duties conferred and imposed

upon any corporation, firm, copartnership, association, trust, or individual, existing and doing business under the laws of this state, are hereby enlarged as each particular case may require to conform to the provisions of *this act. [1943 c 247 § 45; Rem. Supp. 1943 § 3778-45.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.20.040 Prior corporations not affected. The provisions of *this act do not affect the corporate existence or rights or powers of any cemetery organized under any law then existing prior to June 9, 1943, and as to such cemeteries and their rights, powers specified in their charters or articles of incorporation, the laws under which the corporation was organized and existed and under which such rights and powers become fixed or vested are applicable. [1943 c 247 § 44; Rem. Supp. 1943 § 3778-44.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.20.050 General powers of cemetery corporations. Unless otherwise limited by the law under which created[,] cemetery authorities shall in the conduct of their business have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitation of general law as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. [1943 c 247 § 59; Rem. Supp. 1943 § 3778-59.]

68.20.060 Specific powers—Rule making and enforcement. A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and *68.48.080. [1943 c 247 § 46; Rem. Supp. 1943 § 3778-46. Formerly RCW 68.20.070, part. FORMER PART OF SECTION: 1943 c 247 §§ 47 through 52 now codified as RCW 68.20.061 through 68.20.066.]

***Reviser's note:** RCW 68.48.080 was recodified as RCW 68.56.050 pursuant to 1987 c 331 § 89.

68.20.061 Specific powers—Control of property. It may restrict and limit the use of all property within its cemetery. [1943 c 247 § 47; Rem. Supp. 1943 § 3778-47. Formerly RCW 68.20.060, part.]

68.20.062 Specific powers—Regulation as to type of markers, monuments, etc. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions. [1943 c 247 § 48; Rem. Supp. 1943 § 3778-48. Formerly RCW 68.20.060, part.]

68.20.063 Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the cemetery. [1943 c 247 § 49; Rem. Supp. 1943 § 3778-49. Formerly RCW 68.20.060, part.]

68.20.064 Specific powers—Regulation of plants and shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the cemetery. [1943 c 247 § 50; Rem. Supp. 1943 § 3778-50. Formerly RCW 68.20.060, part.]

68.20.065 Specific powers—Prevention of interment. It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations. [1943 c 247 § 51; Rem. Supp. 1943 § 3778-51. Formerly RCW 68.20.060, part.]

68.20.066 Specific powers—Prevention of improper assemblages. It may regulate the conduct of persons and prevent improper assemblages in the cemetery. [1943 c 247 § 52; Rem. Supp. 1943 § 3778-52. Formerly RCW 68.20.060, part.]

68.20.067 Specific powers—Rules and regulations for general purposes. It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted. [1943 c 247 § 53; Rem. Supp. 1943 § 3778-53. Formerly RCW 68.20.070, part.]

68.20.070 Rules and regulations—Posting. The rules and regulations made pursuant to RCW 68.20.060 shall be plainly printed or typewritten and maintained subject to inspection in the office of the cemetery authority or in such place or places within the cemetery as the cemetery authority may prescribe. [1943 c 247 § 54; Rem. Supp. 1943 § 3778-54. FORMER PART OF SECTION: 1943 c 247 §§ 46 and 53 now codified as RCW 68.20.060 and 68.20.067.]

68.20.080 Cities and counties may regulate cemeteries. Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries. [1943 c 247 § 143; Rem. Supp. 1943 § 3778-143.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.090 Permit required, when. It shall be unlawful for any person, firm, or corporation to establish or maintain any cemetery or to extend the boundaries of any existing cemetery in this state without a permit first having been applied for and permission obtained in accordance with the city and county ordinance and other zoning or statutory provisions governing the same. [1943 c 247 § 144; Rem. Supp. 1943 § 3778-144.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.110 Nonprofit cemetery association—Tax exempt land—Irreducible fund—Bonds.

*Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes without discrimination as to race, color, national origin or ancestry, and in nowise with a view to profit of the members of such association: PROVIDED, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. Such association may by its bylaws provide that a stated percentage of the moneys realized from the sale of lots, donations or other sources of revenue, shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof may deem proper. The interest or income arising from the irreducible fund, provided for in any bylaws, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the lots sold to the members of such association, and where any bylaws has been enacted for the creation of an irreducible fund as herein provided for it cannot thereafter be amended in any manner whatever except for the purpose of increasing such fund. After paying for the land all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents or otherwise, shall be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts except for originally purchasing, laying out and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots. [1961 c 103 § 2; 1899 c 33 § 3; RRS § 3766. Formerly RCW 68.20.110 and 68.24.200.]

*Reviser's note: The term "Such association" appears in 1899 c 33, which provided for the creation of cemetery associations under 1895 c 158 which was codified in chapter 24.16 RCW. Chapter 24.16 RCW was repealed by the Washington Nonprofit Corporation Act, 1967 c 235, chapter 24.03 RCW.

Construction—1961 c 103: See note following RCW 49.60.040.

Property taxes, exemptions: RCW 84.36.020.

68.20.120 Sold lots exempt from taxes, etc.—Nonprofit associations. Burial lots, sold by *such association shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment or other claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in nowise with a view to profit. [1899 c 33 § 5; RRS § 3768. Formerly RCW 68.24.210.]

*Reviser's note: For "such association," see note following RCW 68.20.110.

Cemetery property exempt from execution: RCW 68.24.220.
taxation: RCW 84.36.020.

68.20.130 Ground plans. All *such associations shall cause a plan of their grounds and of the blocks and lots by them laid out, to be made and recorded, such blocks and lots to be numbered by regular consecutive numbers, and shall have power to enclose, improve and adorn the grounds and avenues, to erect buildings for the use of the association and to prescribe rules for the designation and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. An annual exhibit shall be made of the affairs of the association. The plan, or plat, hereinbefore required, shall be recorded by the proper county auditor for a fee not to exceed ten cents a lot, and if the actual cost of recording the same shall be less than ten cents a lot, then said auditor shall record the same at the actual cost thereof. [1905 c 64 § 1; 1899 c 33 § 6; RRS § 3769. Formerly RCW 68.24.230.]

*Reviser's note: For "such associations," see note following RCW 68.20.110.

County auditor's fees, generally: RCW 36.18.010.

68.20.140 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 33.]

Effective date—1987 c 331: See RCW 68.05.900.

Chapter 68.24 CEMETERY PROPERTY

Sections

68.24.010	Right to acquire property
68.24.020	Surveys and maps.
68.24.030	Declaration of dedication and maps—Filing.
68.24.040	Dedication, when complete.
68.24.050	Constructive notice.
68.24.060	Maps and plats—Amendment.
68.24.070	Permanency of dedication
68.24.080	Rule against perpetuities, etc., inapplicable.
68.24.090	Removal of dedication—Procedure.
68.24.100	Notice of hearing.
68.24.110	Sale of plots.
68.24.115	Execution of conveyances.
68.24.120	Plots indivisible.
68.24.130	Sale for resale prohibited—Penalty.
68.24.140	Commission on sales prohibited—Penalty.
68.24.150	Employment of "runners" prohibited—Penalty.
68.24.160	Liens subordinate to dedication.
68.24.170	Record of ownership and transfers.
68.24.175	Inspection of records.
68.24.180	Opening of roads, railroads through cemetery—Consent required—Exception.
68.24.190	Opening road through cemetery—Penalty.
68.24.220	Burying place exempt from execution.
68.24.240	Certain cemetery lands exempt from taxes, etc.—1901 c 147.

68.24.010 Right to acquire property. Cemetery authorities may take by purchase, donation or devise, property consisting of lands, mausoleums, crematories, and columbariums, or other property within which the interment

of the dead may be authorized by law. [1943 c 247 § 61; Rem. Supp. 1943 § 3778-61.]

68.24.020 Surveys and maps. Every cemetery authority, from time to time as its property may be required for cemetery purposes, shall:

(1) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.

(2) In case of a mausoleum, or columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names or numbers. [1943 c 247 § 62; Rem. Supp. 1943 § 3778-62.]

68.24.030 Declaration of dedication and maps—Filing. The cemetery authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes. [1943 c 247 § 63; Rem. Supp. 1943 § 3778-63.]

County auditor: Chapter 36.22 RCW.

County auditor fees, generally: RCW 36.18.010.

68.24.040 Dedication, when complete. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes. [1943 c 247 § 64; Rem. Supp. 1943 § 3778-64.]

68.24.050 Constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to cemetery purposes. [1943 c 247 § 66; Rem. Supp. 1943 § 3778-66.]

68.24.060 Maps and plats—Amendment. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person. [1943 c 247 § 65; Rem. Supp. 1943 § 3778-65.]

68.24.070 Permanency of dedication. After property is dedicated to cemetery purposes pursuant to RCW 68.24.010 through 68.24.060, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution, or otherwise except as provided in *this act. [1943 c 247 § 67; Rem. Supp. 1943 § 3778-67.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

68.24.080 Rule against perpetuities, etc., inapplicable. Dedication to cemetery purposes pursuant to *this act

is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public. [1943 c 247 § 68; Rem. Supp. 1943 § 3778-68.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

68.24.090 Removal of dedication—Procedure. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

(3) That notice of the proposed removal of dedication has been given the cemetery board in writing at least sixty days before filing the proceedings in superior court. [1987 c 331 § 34; 1943 c 247 § 76; Rem. Supp. 1943 § 3778-76.]

Effective date—1987 c 331: See RCW 68.05.900.

68.24.100 Notice of hearing. The notice of hearing provided in RCW 68.24.090 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. Said notice shall:

(1) Describe the portion of the cemetery property sought to be removed from dedication.

(2) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(3) Specify the time and place of the hearing. [1943 c 247 § 77; Rem. Supp. 1943 § 3778-77.]

68.24.110 Sale of plots. After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect or thereafter adopted by the cemetery authority, and subject to such other and further limitations, conditions and restrictions as may be inserted in or made a part of the declaration of dedication by reference, or included in the instrument of conveyance of such plot. [1943 c 247 § 70; Rem. Supp. 1943 § 3778-70. FORMER PART OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

68.24.115 Execution of conveyances. All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority.

ty. [1943 c 247 § 72; Rem. Supp. 1943 § 3778-72. Formerly RCW 68.24.110, part.]

68.24.120 Plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law. [1943 c 247 § 71; Rem. Supp. 1943 § 3778-71.]

68.24.130 Sale for resale prohibited—Penalty. It shall be unlawful for any person, firm or corporation to sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 73; Rem. Supp. 1943 § 3778-73.]

68.24.140 Commission on sales prohibited—Penalty. It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 74; Rem. Supp. 1943 § 3778-74.]

68.24.150 Employment of "runners" prohibited—Penalty. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in RCW 68.24.140, any commission or bonus or rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory or cemetery, is guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 75; Rem. Supp. 1943 § 3778-75.]

68.24.160 Liens subordinate to dedication. All mortgages, deeds of trust and other liens of any nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of the lien, dedicated as a cemetery pursuant to this part, or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed or lien, dedicated to cemetery purposes pursuant to this part, shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication and any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes. [1943 c 247 § 60; Rem. Supp. 1943 § 3778-60.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.24.170 Record of ownership and transfers. A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. No transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete or effective until

recorded on the books of the cemetery authority. [1943 c 247 § 40; Rem. Supp. 1943 § 3778-40. FORMER PART OF SECTION: 1943 c 247 § 41 now codified as RCW 68.24.175.]

68.24.175 Inspection of records. The records shall be open to inspection during the customary office hours of the cemetery. [1943 c 247 § 41; Rem. Supp. 1943 § 3778-41. Formerly RCW 68.24.170, part.]

68.24.180 Opening of roads, railroads through cemetery—Consent required—Exception. After dedication under this title, and as long as the property remains dedicated to cemetery purposes, a railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall not be laid out, through, over, or across any part of it without the consent of the cemetery authority owning and operating it, or of not less than two-thirds of the owners of interment plots: PROVIDED HOWEVER, That a city of under twenty thousand may initiate, prior to January 1, 1995, an action to condemn cemetery property if the purpose is to further improve an existing street, or other public improvement and the proposed improvement does not interfere with existing interment plots containing human remains. [1994 c 273 § 20; 1984 c 7 § 369; 1959 c 217 § 1; 1947 c 69 § 1; 1943 c 247 § 69; Rem. Supp. 1947 § 3778-69.]

Severability—1984 c 7: See note following RCW 47.01.141.

68.24.190 Opening road through cemetery—Penalty. Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon, such part of any inclosure as may be used for the burial of the dead, without authority of law or the consent of the owner thereof, shall be guilty of a misdemeanor. [1909 c 249 § 241; RRS § 2493.]

68.24.220 Burying place exempt from execution. Whenever any part of *such burying ground shall have been designated and appropriated by the proprietors thereof as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant or execution, for any tax or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of such owner shall be insolvent. [1857 p 28 § 2; RRS § 3760.]

***Reviser's note:** The phrase "such burying ground" appears in 1856-57 p 28, which provided for the creation of corporations for the purpose of establishing a burying ground or place of sepulture.

Cemetery property exempt from taxation: RCW 84.36.020.

68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147. Upon compliance with the requirements of *this act said lands shall forever be exempt from taxation, judgment and other liens and executions. [1901 c 147 § 4; RRS § 3763.]

***Reviser's note:** "this act" appears in 1901 c 147, the remaining sections of which were repealed by 1943 c 247 § 148. These sections read as follows:

"Section 1. Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial

and cemetery purposes by complying with the terms of this act, provided said lands so sought to be reserved shall not exceed in area one acre.

Sec. 2. Such person or persons shall cause such land to be surveyed and platted.

Sec. 3. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid."

Property taxes, exemptions: RCW 84.36.020.

Chapter 68.28

MAUSOLEUMS AND COLUMBARIUMS

Sections

68.28.010	Sections applicable to mausoleums, columbariums, etc.
68.28.020	Building converted to use as a place of interment.
68.28.030	Standards of construction.
68.28.040	Fireproof construction.
68.28.050	Ordinances and specifications to be complied with.
68.28.060	Improper construction a nuisance—Penalty.
68.28.065	Court to fix costs.
68.28.070	Construction in compliance with existing laws.

68.28.010 Sections applicable to mausoleums, columbariums, etc. RCW 68.28.020 through 68.28.070, 68.20.080, 68.20.090, *68.48.040 and 68.48.060, apply to all buildings, mausoleums and columbariums used or intended to be used for the interment of the remains of fifteen or more persons whether erected under or above the surface of the earth where any portion of the building is exposed to view or, when interment is completed, is less than three feet below the surface of the earth and covered by earth. [1943 c 247 § 134; Rem. Supp. 1943 § 3778-134.]

***Reviser's note:** RCW 68.48.040 and 68.48.060 have been recodified as RCW 68.56.040 and 68.56.050, respectively, pursuant to 1987 c 331 § 89.

68.28.020 Building converted to use as a place of interment. A building not erected for, or which is not used as, a place of interment of human remains which is converted or altered for such use is subject to *this act. [1943 c 247 § 135; Rem. Supp. 1943 § 3778-135.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.28.030 Standards of construction. No building or structure intended to be used for the interment of human remains shall be constructed, and a building not used for the interment of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will insure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science. [1943 c 247 § 136; Rem. Supp. 1943 § 3778-136.]

68.28.040 Fireproof construction. All mausoleums or columbariums hereafter constructed shall be of class A fireproof construction. [1943 c 247 § 137; Rem. Supp. 1943 § 3778-137.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.28.050 Ordinances and specifications to be complied with. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing

class A construction, the provisions of the local ordinances and specifications shall not be violated. [1943 c 247 § 138; Rem. Supp. 1943 § 3778-138.]

68.28.060 Improper construction a nuisance—Penalty. Every owner or operator of a mausoleum or columbarium erected in violation of *this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. [1943 c 247 § 140; Rem. Supp. 1943 § 3778-140.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.28.065 Court to fix costs. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case. [1943 c 247 § 141; Rem. Supp. 1943 § 3778-141.]

68.28.070 Construction in compliance with existing laws. The penalties of *this act shall not apply as to any building which, at the time of construction was constructed in compliance with the laws then existing, if its use is not in violation of the laws for the protection of public health. [1943 c 247 § 142; Rem. Supp. 1943 § 3778-142.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

Chapter 68.32

TITLE AND RIGHTS TO CEMETERY PLOTS

Sections

68.32.010	Presumption as to title.
68.32.020	Vested right of spouse.
68.32.030	Vested right—Termination.
68.32.040	Descent of title to plot.
68.32.050	Affidavit as authorization.
68.32.060	Family plot—Alienability.
68.32.070	Joint tenants—Vested rights.
68.32.080	Joint tenants—Survivorship.
68.32.090	Joint tenants—Identification.
68.32.100	Co-owners may designate representative.
68.32.110	Order of interment—General.
68.32.120	Order of interment, when no parent or child survives.
68.32.130	Waiver of right of interment.
68.32.140	Termination of vested right by waiver.
68.32.150	Limitations on vested rights.
68.32.160	Conveyance of plot to cemetery authority, effect.
68.32.170	Exemption from inheritance tax.

68.32.010 Presumption as to title. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance. [1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

68.32.020 Vested right of spouse. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the

person becomes the spouse of the owner. [1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

68.32.030 Vested right—Termination. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree. [1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

68.32.040 Descent of title to plot. If no interment is made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred are lawfully removed, upon the death of the owner, unless the owner has disposed of the plot either by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the plot descends to the surviving spouse or, if there is no surviving spouse, to the heirs at law of the owner subject to the rights of interment of the decedent. [1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

68.32.050 Affidavit as authorization. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it. [1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

68.32.060 Family plot—Alienability. Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to alienation only upon agreement of the children of the owner living at the time of said alienation. [1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

68.32.070 Joint tenants—Vested rights. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed. [1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

68.32.080 Joint tenants—Survivorship. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant. [1943 c 247 § 95; Rem. Supp. 1943 § 3778-95.]

Joint tenants, simultaneous death: RCW 11.05.030.

68.32.090 Joint tenants—Identification. An affidavit by any person having knowledge of the facts setting forth

the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest. [1943 c 247 § 96; Rem. Supp. 1943 § 3778-96.]

68.32.100 Co-owners may designate representative. When there are several owners of a plot, or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot. [1943 c 247 § 97; Rem. Supp. 1943 § 3778-97.]

68.32.110 Order of interment—General. In a family plot one grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot. [1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

68.32.120 Order of interment, when no parent or child survives. If no parents or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law. [1943 c 247 § 100; Rem. Supp. 1943 § 3778-100.]

68.32.130 Waiver of right of interment. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner; and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot. [1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

68.32.140 Termination of vested right by waiver. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom vested. [1943 c 247 § 102; Rem. Supp. 1943 § 3778-102.]

68.32.150 Limitations on vested rights. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space

is located. [1943 c 247 § 103; Rem. Supp. 1943 § 3778-103.]

68.32.160 Conveyance of plot to cemetery authority, effect. A cemetery authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise. [1943 c 247 § 104; Rem. Supp. 1943 § 3778-104.]

68.32.170 Exemption from inheritance tax. Cemetery property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes. [1943 c 247 § 92; Rem. Supp. 1943 § 3778-92.]

Reviser's note: The inheritance tax was repealed by 1981 2nd ex.s. c 7 § 83.100.160 (Initiative Measure No. 402). See RCW 83.100.900. For later enactment, see chapter 83.100 RCW.

Chapter 68.36 ABANDONED LOTS

Sections

68.36.010	Sale of abandoned space—Presumption of abandonment.
68.36.020	Notice—Requisites—Limitation on placing.
68.36.030	Petition for order of abandonment—Notice and hearing.
68.36.040	Service of notice.
68.36.050	Hearing—Order—Attorney's fee.
68.36.060	Contract for care before adjudication.
68.36.070	Contract for care within one year after adjudication.
68.36.080	Sale after one year.
68.36.090	Disposition of proceeds.
68.36.100	Petition may cover several lots.

68.36.010 Sale of abandoned space—Presumption of abandonment. The ownership of or right in or to unoccupied cemetery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person, association, corporation or municipality having ownership or management of the cemetery containing such unoccupied cemetery space, for the purpose of providing for *perpetual care. The continued failure by an owner to maintain or care for an unoccupied cemetery lot, unoccupied part of lot, unoccupied lots or parts of lots for a period of five years shall create and establish a presumption that the same has been abandoned. [1943 c 247 § 78; Rem. Supp. 1943 § 3778-78.]

***Reviser's note:** The term "perpetual care" referred to herein originally appeared throughout this chapter and chapters 68.40 and 68.44 RCW. The legislature in 1953 c 290 amended most sections in these chapters to read "endowment care." 1953 c 290 § 24 provides that it is a misdemeanor for any cemetery authority, cemetery broker, etc., to represent that any fund set up for maintaining care is perpetual. See RCW 68.40.085.

68.36.020 Notice—Requisites—Limitation on placing. Before such five year period shall commence to run, the owner or manager of the cemetery shall place upon and during such five year period shall maintain upon such unoccupied cemetery space a suitable notice, setting forth the date the notice is placed thereon and stating that such unoccupied space is subject to forfeiture and sale by the owner or manager of the cemetery to provide for *perpetual care, if the owner of such unoccupied space fails during the next five years following the date of the notice to maintain or care for the same or unless the owner of such unoccupied

space contracts for the *perpetual care of the same: PROVIDED, HOWEVER, That such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty years have elapsed since the last interment in any such lot of a member of the immediate family of the record owner. Members of the immediate family shall be construed to include surviving spouse, children, parents, and brothers and sisters. [1943 c 247 § 79; Rem. Supp. 1943 § 3778-79.]

***Reviser's note:** For "perpetual care," see note following RCW 68.36.010.

68.36.030 Petition for order of abandonment—Notice and hearing. After such five year period, the owner or manager of the cemetery may file in the office of the county clerk for the county in which the cemetery is located a verified petition, setting forth its ownership or management of the cemetery, the facts relating to the continued failure by the owner for a period of five consecutive years to maintain or care for such cemetery lot, part of lot, lots or parts of lots and such facts relating to the ownership thereof as petitioner may have, and asking for an order of the superior court for such county, adjudging the lot, part of lot, lots or parts of lots to have been abandoned.

At the time of filing such petition, the owner or manager of the cemetery shall apply for and the superior court for such county shall fix a time for the hearing of the petition not less than sixty days nor more than ninety days from the time of the application. Not less than sixty days before the time fixed for the hearing of the petition, notice of the hearing and the nature and object of the same shall be given to the owner of such unoccupied space, as herein provided. [1943 c 247 § 80; Rem. Supp. 1943 § 3778-80.]

68.36.040 Service of notice. The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his last known address and by publishing the notice three times in a legal newspaper published in the county in which the cemetery is located, and if there be no legal newspaper in the county, then in a legal newspaper published in an adjoining county, and if there be no legal newspaper in an adjoining county, then in a legal newspaper published at the capital of the state. In the event that the whereabouts of the owner is unknown, or if the owner be unknown, then the notice may be given to such owner, unknown owner or unknown claimant, and all other persons or parties claiming any right, title or interest therein, by publishing the notice three times in a legal newspaper as aforesaid. The affidavit of the owner or manager of the cemetery involved to the effect that such owner or claimant is unknown to him and that he exercised diligence in attempting to locate such unknown parties shall, if filed in the proceeding, be conclusive to that effect. [1943 c 247 § 81; Rem. Supp. 1943 § 3778-81.]

68.36.050 Hearing—Order—Attorney's fee. Thereupon, such owner or claimant may appear and make answer to the allegations of said petition, and in case of his failure so to do prior to the day fixed for hearing, his default shall be entered and it shall then be the duty of the superior court for such county to immediately enter an order adjudg-

ing such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership or management of the cemetery containing the same. In the event the owner or claimant shall appear and file his answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of said petition or on any subsequent day to which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine therefrom that there has been a continued failure to maintain or care for such unoccupied space for a period of five consecutive years preceding the filing of said petition, an order shall be entered accordingly adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the court shall fix such sum as it shall deem reasonable as an attorney's fee for petitioner's attorney for each lot, part of lot, lots or parts of lots adjudged to have been abandoned in such proceedings. [1943 c 247 § 82; Rem. Supp. 1943 § 3778-82.]

68.36.060 Contract for care before adjudication. If at any time before the adjudication of abandonment the owner of an unoccupied space contracts with the owner or manager of the cemetery for the endowment care of the space, the court shall dismiss the proceedings as to such unoccupied space. [1953 c 290 § 1; 1943 c 247 § 83; Rem. Supp. 1943 § 3778-83.]

68.36.070 Contract for care within one year after adjudication. If at any time within one year after the adjudication of abandonment, the former owner of the unoccupied space shall contract for its endowment care, and reimburse the owner or manager of the cemetery for the expense of the proceedings, including attorney's fees, the space shall not be sold and the order adjudging it to have been abandoned shall be vacated upon petition of the former owner. [1953 c 290 § 2; 1943 c 247 § 84; Rem. Supp. 1943 § 3778-84.]

68.36.080 Sale after one year. One year after the entry of the order adjudging such lot, part of lot, lots or parts of lots to have been abandoned, the owner or manager of the cemetery in which the same is located shall have the power to sell the same, in whole or in part, at public or private sale, and convey by deed good, clear and sufficient title thereto. [1943 c 247 § 85; Rem. Supp. 1943 § 3778-85.]

68.36.090 Disposition of proceeds. Not more than twenty percent of the funds realized from the sale of abandoned space shall be used to defray the expenses of the proceedings to abandon, and the improving of it in such manner as to place it in condition for care, and the balance shall be placed immediately in a trust fund or shall be immediately transferred to a nonprofit organization to be used exclusively for the endowment care and maintenance of the cemetery. [1953 c 290 § 3; 1943 c 247 § 86; Rem. Supp. 1943 § 3778-86.]

68.36.100 Petition may cover several lots. In any one petition for abandonment, a petitioner may, irrespective of diversity of ownership, include in any such petition as many lots or parts of lots as come within the provisions of *this act. The petition for abandonment shall be entitled: "In the Matter of the Abandonment, Forfeiture and Sale of Unoccupied and Uncared for Space located in Cemetery." [1943 c 247 § 87; Rem. Supp. 1943 § 3778-87.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

Chapter 68.40

ENDOWMENT AND NONENDOWMENT CARE

Sections

- 68.40.010 Cemetery authorities—Deposit in endowment care fund required.
- 68.40.025 Nonendowed sections—Identification.
- 68.40.040 Endowment care fiscal reports—Review by plot owners.
- 68.40.060 May accept property in trust—Application of income.
- 68.40.085 Representing fund as perpetual—Penalty.
- 68.40.090 Penalty.
- 68.40.095 Certain cemeteries exempt from chapter.
- 68.40.100 Only nonendowment care cemeteries now in existence are authorized.
- 68.40.900 Effective date—1987 c 331.

68.40.010 Cemetery authorities—Deposit in endowment care fund required. After July 1, 1987, a cemetery authority not exempt under this chapter shall deposit in an endowment care fund not less than the following amounts for plots sold: Ten percent of the gross sales price, with a minimum of ten dollars for each adult grave; ten percent of the gross sales price, with a minimum of five dollars for each niche; and ten percent of the gross sales price, with a minimum of thirty dollars for each crypt.

In the event that a cemetery authority sells a lot, crypt, or niche at a price that is less than its current list price, or gives away, bequeaths, or otherwise gives title to a lot, crypt, or niche, such lot, crypt, or niche shall be endowed at the rate at which it would normally be endowed: A minimum of ten percent of normal sales price or ten dollars per lot, whichever is greater; ten percent of normal sales price or five dollars per niche, whichever is greater; and ten percent of normal sales price or thirty dollars per crypt, whichever is greater.

The deposits shall be made not later than the twentieth day of the month following the final payment on the sale price. If a contract for crypts, niches, or graves is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the endowment care fund ten percent of the gross sales price with a minimum of ten dollars for each adult grave, five dollars for each niche, and thirty dollars for each crypt within twenty days of receipt of payment of the proceeds from such sale or loan.

Any cemetery hereafter established shall have deposited in an endowment care fund the sum of twenty-five thousand dollars before disposing of any plot or making any sale thereof. [1987 c 331 § 35; 1984 c 53 § 1; 1961 c 133 § 2; 1953 c 290 § 4; 1943 c 247 § 118; Rem. Supp. 1943 § 3778-118.]

68.40.025 Nonendowed sections—Identification. Cemeteries with nonendowed sections opened before July 1, 1987, shall only be required to endow sections opened after July 1, 1987. On the face of any contract, receipt, or deed used for sales of nonendowed lots shall be prominently displayed the words "Nonendowment section." All nonendowed sections shall be identified as such by posting of a legible sign containing the following phrase: "Nonendowment section." [1987 c 331 § 36.]

68.40.040 Endowment care fiscal reports—Review by plot owners. A cemetery authority not exempt under this chapter shall file in its principal office for review by plot owners the previous seven fiscal years' endowment care reports as filed with the cemetery board in accordance with RCW 68.44.150. [1987 c 331 § 37; 1953 c 290 § 7; 1943 c 247 § 122; Rem. Supp. 1943 § 3778-122.]

68.40.060 May accept property in trust—Application of income. The cemetery authority of an endowment care cemetery may accept any property bequeathed, granted, or given to it in trust and may apply the income from such property bequeathed, granted, or given to in trust to any or all of the following purposes:

- (1) Improvement or embellishment of all or any part of the cemetery or any lot in it;
- (2) Erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;
- (3) Planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;
- (4) Special care or ornamenting of any part of any plot, section, or building in the cemetery; and
- (5) Any purpose or use consistent with the purpose for which the cemetery was established or is maintained. [1987 c 331 § 38; 1953 c 290 § 8; 1943 c 247 § 129; Rem. Supp. 1943 § 3778-129.]

68.40.085 Representing fund as perpetual—Penalty. It is a misdemeanor for any cemetery authority, its officers, employees, or agents, or a cemetery broker or salesman to represent that an endowment care fund, or any other fund set up for maintaining care, is perpetual. [1953 c 290 § 24.]

68.40.090 Penalty. Any person, partnership, corporation, association, or his or its agents or representatives who shall violate any of the provisions of this chapter or make any false statement appearing on any sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor. [1987 c 331 § 39; 1943 c 247 § 125; Rem. Supp. 1943 § 3778-125.]

68.40.095 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 40.]

68.40.100 Only nonendowment care cemeteries now in existence are authorized. After June 7, 1979, no nonendowment care cemetery may be established. However,

any nonendowment care cemetery in existence on June 7, 1979, may continue to operate as a nonendowment care cemetery. [1979 c 21 § 18.]

68.40.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.44

ENDOWMENT CARE FUND

Sections

68.44.010	Funds authorized—Investments.
68.44.020	Use and care of funds.
68.44.030	Authorized investments.
68.44.060	Unauthorized loans—Penalty.
68.44.070	Purpose of endowment care—Validity.
68.44.080	Plans for care—Source of fund.
68.44.090	Covenant to care for cemetery.
68.44.100	Agreement by owner to care for plot.
68.44.110	Trustees of fund.
68.44.115	Trustee to file statement with board—Resignation of trusteeship.
68.44.120	Directors as trustees—Secretary.
68.44.130	Bank or trust company as trustee.
68.44.140	Compensation of trustees.
68.44.150	Annual report of condition of fund.
68.44.160	Contributions.
68.44.170	Use of income from fund.
68.44.180	Certain cemeteries exempt from chapter.
68.44.900	Effective date—1987 c 331.

68.44.010 Funds authorized—Investments. Any cemetery authority not exempt under chapter 68.40 RCW shall establish, maintain, and operate an inviolable endowment care fund. Endowment care, special care, and other cemetery authorities' endowment care funds may be commingled for investment and the income therefrom shall be divided between the funds in the proportion that each contributed to the sum invested. The funds shall be held in the name of the trustees appointed by the cemetery authority with the words "endowment care fund" being a part of the name. [1987 c 331 § 41; 1953 c 290 § 11; 1943 c 247 § 105; Rem. Supp. 1943 § 3778-105.]

68.44.020 Use and care of funds. Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established, and shall be kept separate and distinct from all assets of the cemetery authority. The principal shall forever remain inviolable and may not be reduced in any way not found within RCW 11.100.020. [1987 c 331 § 42; 1953 c 290 § 12. Prior: (i) 1943 c 247 § 106; Rem. Supp. 1943 § 3778-106. (ii) 1943 c 247 § 126; Rem. Supp. 1943 § 3778-126.]

68.44.030 Authorized investments. Endowment care funds shall be kept invested in accordance with the provisions of RCW 11.100.020 subject to the following restrictions:

- (1) No officer or director of the cemetery authority, trustee of the endowment care or special care funds, or spouse, sibling, parent, grandparent, or issue of such officer,

director, or trustee, shall borrow any of such funds for himself, directly or indirectly.

(2) No funds shall be loaned to the cemetery authority, its agents, or employees, or to any corporation, partnership, or other business entity in which the cemetery authority has any ownership interest.

(3) No funds shall be invested with persons or business entities operating in a business field directly related to cemeteries, including, but not limited to, mortuaries, monument production and sales, florists, and rental of funeral facilities.

(4) Notwithstanding any other provisions contained in this section, funds may be invested in any commercial bank, mutual savings bank, or savings and loan association duly chartered and operating under the laws of the United States or statutes of the state of Washington. [1985 c 30 § 138. Prior: 1984 c 149 § 175; 1979 c 21 § 19; 1953 c 290 § 13; 1943 c 247 § 127; Rem. Supp. 1943 § 3778-127.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005

68.44.060 Unauthorized loans—Penalty. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of RCW 68.44.030 are severally guilty of a class C felony punishable under chapter 9A.20 RCW. [1984 c 53 § 2; 1943 c 247 § 133; Rem. Supp. 1943 § 3778-133.]

68.44.070 Purpose of endowment care—Validity. The endowment care and special care funds and all payments or contributions thereto are hereby expressly permitted for charitable and eleemosynary purposes. Endowment care and such contributions are provisions for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and provisions for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. No payment, or contribution for general endowment care, is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property. [1953 c 290 § 16. Prior: (i) 1943 c 247 § 130; Rem. Supp. 1943 § 3778-130. (ii) 1943 c 247 § 117; Rem. Supp. 1943 § 3778-117.]

68.44.080 Plans for care—Source of fund. The cemetery authority may from time to time adopt plans for the general care, maintenance, and embellishment of its cemetery, and charge and collect from all purchasers of plots such reasonable sum as it deems will aggregate a fund, the reasonable income from which will provide care, maintenance, and embellishment on an endowment basis. [1953 c 290 § 17; 1943 c 247 § 108; Rem. Supp. 1943 § 3778-108.]

68.44.090 Covenant to care for cemetery. Upon payment of the purchase price and the amount fixed as a

proportionate contribution for endowment care, there may be included in the deed of conveyance or by separate instrument, an agreement to care, in accordance with the plan adopted, for the cemetery and its appurtenances on an endowment basis to the proportionate extent the income received by the cemetery authority from the contribution will permit. [1953 c 290 § 18; 1943 c 247 § 109; Rem. Supp. 1943 § 3778-109.]

68.44.100 Agreement by owner to care for plot. Upon the application of an owner of a plot, and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a cemetery authority may enter into an agreement with him for the care of his plot and its appurtenances. [1953 c 290 § 19; 1943 c 247 § 110; Rem. Supp. 1943 § 3778-110.]

68.44.110 Trustees of fund. Unless an association of lot owners has been created for the purpose of appointing trustees, the cemetery authority shall appoint a board of not less than three members as trustees for its endowment care fund, who shall hold office subject to the direction of the cemetery authority. [1987 c 331 § 43; 1953 c 290 § 20; 1943 c 247 § 111; Rem. Supp. 1943 § 3778-111.]

68.44.115 Trustee to file statement with board—Resignation of trusteeship. To be considered qualified as a trustee, each trustee of an endowment care fund appointed in accordance with this chapter shall file with the board a statement of acceptance of fiduciary responsibility, on a form approved by the board, before assuming the duties of trustee. The trustee shall remain in the trustee's fiduciary capacity until such time as the trustee advises the cemetery board in writing of the trustee's resignation of trusteeship. [1987 c 331 § 44.]

68.44.120 Directors as trustees—Secretary. The directors of a cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings. [1987 c 331 § 45; 1953 c 290 § 21; 1943 c 247 § 112; Rem. Supp. 1943 § 3778-112.]

68.44.130 Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any cemetery authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business, and said bank or trust company shall be authorized to receive and accept said fund, including any accumulated endowment care fund in existence at the time of its appointment. [1987 c 331 § 46; 1943 c 247 § 113; Rem. Supp. 1943 § 3778-113.]

68.44.140 Compensation of trustees. Compensation to the board of trustees or trustee for services as trustee and other compensation for administration of trust funds shall not exceed in the aggregate the customary fees charged by banks and trust companies for like services. Such fees may not be

paid from the fund principal. [1987 c 331 § 47; 1979 c 21 § 20; 1943 c 247 § 114; Rem. Supp. 1943 § 3778-114.]

68.44.150 Annual report of condition of fund. The cemetery authority or the trustees in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, make and keep on file for seven years a true and correct written report, verified on oath by an officer of the cemetery authority or by the oath of one or more of the trustees, showing the actual financial condition of the funds. [1987 c 331 § 48; 1979 c 21 § 21; 1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

68.44.160 Contributions. A cemetery authority which has established an endowment care fund may take and hold, as a part of or incident to the fund, any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund. [1953 c 290 § 22; 1943 c 247 § 116; Rem. Supp. 1943 § 3778-116.]

68.44.170 Use of income from fund. The income from the endowment care fund shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery. [1953 c 290 § 23; 1943 c 247 § 107; Rem. Supp. 1943 § 3778-107.]

68.44.180 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 49.]

68.44.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.46

PREARRANGEMENT CONTRACTS

Sections

68.46.010	Definitions.
68.46.020	Prearrangement trust funds—Required.
68.46.030	Prearrangement trust funds—Deposits—Bond requirements.
68.46.040	Prearrangement trust funds—Deposit with qualified public depository or certain insured instruments.
68.46.050	Withdrawals from trust funds—Notice of department of social and health services' claim.
68.46.055	Cemetery authority may not enter into certain retail contracts which require or permit authority to furnish merchandise, services, etc., at future date—Exclusion of transactions under chapter 63.14 RCW—Prearrangement contracts—Duty of cemetery authority upon death of purchaser or owner.
68.46.060	Termination of contract by purchaser or beneficiary.
68.46.070	Involuntary termination of contract—Refund.
68.46.075	Inactive contracts—Funds transfer—Obligations
68.46.080	Other use of trust funds prohibited.
68.46.090	Financial reports—Filing—Verification.
68.46.100	Information to be furnished purchaser in contract—Information to be furnished purchaser of unconstructed crypts or niches or undeveloped graves.
68.46.110	Compliance required.

68.46.125	Certain cemeteries exempt from chapter.
68.46.130	Exemptions from chapter granted by board.
68.46.150	Sales licenses—Qualifications.
68.46.160	Contract forms—Filing.
68.46.170	Sales licenses—Requirement
68.46.900	Effective date—1987 c 331.

Prearrangement funeral service contracts: RCW 18.39.240 through 18.39.360.

68.46.010 Definitions. Unless the context clearly indicates otherwise, the following terms as used only in this chapter have the meaning given in this section:

(1) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(2) "Cemetery authority" shall have the same meaning as in RCW 68.04.190, and shall also include any individual, partnership, firm, joint venture, corporation, company, association, or joint [joint] stock company, any of which sells cemetery services or merchandise, unconstructed crypts or niches, or undeveloped graves through a prearrangement contract, but shall not include insurance companies licensed under chapter 48.05 RCW.

(3) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(4) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(5) "Depository" means a qualified public depository as defined by *RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, and a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funds are deposited by any cemetery authority.

(6) "Board" means the cemetery board established under chapter 68.05 RCW or its authorized representative.

(7) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped and groomed to the extent customary in the cemetery industry in that community. [1979 c 21 § 22; 1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

*Reviser's note: RCW 39.58.010 was amended by 1996 c 256 § 1 and now defines the term "public depository."

68.46.020 Prearrangement trust funds—Required. Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement funds for the benefit of beneficiaries of prearrangement contracts. [1973 1st ex.s. c 68 § 2.]

68.46.030 Prearrangement trust funds—Deposits—Bond requirements. (1) A cemetery authority shall deposit in its prearrangement trust account a percentage of all funds

collected in payment of each prearrangement contract equal to the greater of:

(a) Fifty percent of the contract price; or

(b) The percentage which the total of the wholesale cost of merchandise and the direct cost of services to be provided pursuant to the contract is of the total contract price.

(2) Any cemetery authority which does not file and maintain with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund fifty percent, or greater percentage as determined under subsection (1) of this section, of all moneys received in payment of each prearrangement contract, excluding sales tax and endowment care if such charge is made.

(3) Any cemetery authority which files and maintains with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund each payment as made on the last fifty percent, or greater percentage as determined under subsection (1) of this section, of each prearrangement contract, excluding sales tax and endowment care, if such charge is made.

(4) Each cemetery authority electing to make payments to its prearrangement trust fund pursuant to subsection (3) of this section shall file and maintain with the board a bond, issued by a surety company authorized to do business in the state, in the amount by which the cemetery authority's contingent liability for refunds pursuant to RCW 68.46.060 exceeds the amount deposited in its prearrangement trust fund. The bond shall run to the state and shall be conditioned that it is for the use and benefit of any person requesting a refund pursuant to RCW 68.46.060 if the cemetery authority does not promptly pay to said person the refund due pursuant to RCW 68.46.060. In addition to any other remedy, every person not promptly receiving the refund due pursuant to RCW 68.46.060 may sue the surety for the refund. The liability of the surety shall not exceed the amount of the bond. Termination or cancellation shall not be effective unless notice is delivered by the surety to the board at least thirty days prior to the date of termination or cancellation. The board shall immediately notify the cemetery authority affected by the termination or cancellation by certified mail, return receipt requested. The cemetery authority shall thereupon obtain another bond or make such other arrangement as may be satisfactory to the board to assure its ability to make refunds pursuant to RCW 68.46.060.

(5) Deposits to the prearrangement trust fund shall be made not later than the twentieth day of each month following receipt of each payment required to be deposited. If a prearrangement contract is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the prearrangement trust fund fifty percent of the total sale price of the prearrangement contract within twenty days of receipt of payment of the proceeds from the sale or loan.

(6) Any failure to fund a prearrangement contract as required by this section shall be grounds for revocation of the cemetery authority's prearrangement sales license. [1984 c 53 § 3; 1979 c 21 § 24; 1973 1st ex.s. c 68 § 3.]

68.46.040 Prearrangement trust funds—Deposit with qualified public depository or certain insured

instruments. All prearrangement trust funds shall be deposited in a qualified public depository as defined by RCW 68.46.010 or in instruments insured by any agency of the federal government, if these securities are held in public depository. Such savings accounts shall be designated as the "prearrangement trust fund" by name and the particular cemetery authority for the benefit of the beneficiaries named in any prearrangement contract. [1987 c 331 § 50; 1973 1st ex.s. c 68 § 4.]

68.46.050 Withdrawals from trust funds—Notice of department of social and health services' claim. (1) A bank, trust company, or savings and loan association designated as the depository of prearrangement funds shall permit withdrawal by a cemetery authority of all funds deposited under any specific prearrangement contract plus interest accrued thereon, under the following circumstances and conditions:

(a) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered in accordance therewith; or

(b) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms.

(2) The department of social and health services shall notify the cemetery authority maintaining a prearrangement trust fund regulated by this chapter that the department has a claim on the estate of a beneficiary for long-term care services. Such notice shall be renewed at least every three years. The cemetery authority upon becoming aware of the death of a beneficiary shall give notice to the department of social and health services, office of financial recovery, who shall file any claim there may be within thirty days of the notice. [1995 1st sp.s. c 18 § 65; 1973 1st ex.s. c 68 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

68.46.055 Cemetery authority may not enter into certain retail contracts which require or permit authority to furnish merchandise, services, etc., at future date—Exclusion of transactions under chapter 63.14 RCW—Prearrangement contracts—Duty of cemetery authority upon death of purchaser or owner. (1) No cemetery authority may enter into a retail contract for the purchase of debentures, shares, scrip, bonds, notes, or any instrument or evidence of indebtedness, excluding retail installment sales transactions governed by chapter 63.14 RCW, which directly or indirectly requires or permits the cemetery authority to furnish to the holder at a future date cemetery merchandise or services, or crypts, niches, or graves.

(2) A cemetery authority which enters into prearrangement contracts for the sale of unconstructed crypts or niches or undeveloped graves or which conveys undeveloped graves by gift shall maintain an adequate inventory of constructed crypts or niches and developed graves which in quality are equal to or better than the unconstructed crypts or niches, or undeveloped graves if they were constructed or developed. In the event of the death of a purchaser or owner of an unconstructed crypt or niche or undeveloped grave before the unconstructed crypt or niche or undeveloped grave is con-

structed or developed the cemetery authority shall provide a constructed crypt or niche or developed grave of equal or better quality without additional cost or charge. If two or more unconstructed crypts or niches or undeveloped graves are conveyed with the intention that the crypts or niches or graves shall be contiguous to each other or maintained together as a group and the death of any one purchaser or owner in such group occurs before the unconstructed crypts or niches or undeveloped graves are developed, the cemetery authority shall provide additional constructed crypts or niches or developed graves of equal or better quality contiguous to each other or together as a group as originally intended to other purchasers or owners in the group without additional cost or charge. [1984 c 53 § 8.]

68.46.060 Termination of contract by purchaser or beneficiary. Any purchaser or beneficiary or beneficiaries may, upon written demand of any cemetery authority, demand that any prearrangement contract with such cemetery authority be terminated. In such event, the cemetery authority shall within thirty days refund to such purchaser or beneficiary or beneficiaries fifty percent of the moneys received less the contractual price of any merchandise delivered or services performed before the termination plus interest earned. In any case, where, under a prearrangement contract there is more than one beneficiary, no written demand as provided in this section shall be honored by any cemetery authority unless the written demand provided for in this section shall bear the signatures of all of such beneficiaries. [1987 c 331 § 51; 1984 c 53 § 4; 1979 c 21 § 25; 1973 1st ex.s. c 68 § 6.]

68.46.070 Involuntary termination of contract—Refund. Prearrangement contracts shall terminate upon demand of the purchaser of the contract if the cemetery authority shall go out of business, become insolvent or bankrupt, make an assignment for the benefit of creditors, or for any other reason be unable to fulfill the obligations under the contract. Upon demand by the purchaser or beneficiary or beneficiaries of any prearrangement contract, the cemetery authority shall refund one hundred percent of the original contract, less delivered services and merchandise, including funds held in deposit and interest earned thereon, unless otherwise ordered by a court of competent jurisdiction. [1987 c 331 § 52; 1979 c 21 § 26; 1973 1st ex.s. c 68 § 7.]

68.46.075 Inactive contracts—Funds transfer—Obligations. In the event the beneficiary or beneficiaries of a prearrangement contract make no claim within fifty years of the date of the contract for the merchandise and services provided in the prearrangement contract, the funds deposited in the prearrangement trust funds attributable to that contract and the interest on said funds shall be transferred to the cemetery authority's endowment fund to be used for the uses and purposes for which the endowment fund was established. However, the cemetery authority shall remain obligated for merchandise and services, unconstructed crypts or niches, and undeveloped graves under the terms of the prearrangement contract. Claims may be made for merchandise and services, unconstructed crypts or niches, and undeveloped graves on a prearrangement contract after the funds have

been transferred to the endowment fund and shall be paid for from the endowment fund income to the extent of the funds attributable to the prearrangement contract. [1979 c 21 § 27.]

68.46.080 Other use of trust funds prohibited. Prearrangement trust funds shall not be used in any way, directly or indirectly, for the benefit of the cemetery authority or any director, officer, agent or employee of any cemetery authority, including, but not limited to any encumbrance, pledge, or other utilization or prearrangement trust funds as collateral or other security. [1973 1st ex.s. c 68 § 8.]

68.46.090 Financial reports—Filing—Verification. Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office or offices and with the cemetery board a written report upon forms prepared by the cemetery board which shall state the amount of the principle of the prearrangement trust fund or funds, the depository of such fund or funds, and cash on hand which is or may be due to such fund as well as such other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually. These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. Verification of these reports by a certified public accountant in accordance with generally accepted auditing standards shall be required on reports from cemetery authorities which manage prearrangement trust funds totaling in excess of five hundred thousand dollars. [1983 c 190 § 1; 1977 ex.s. c 351 § 5; 1973 1st ex.s. c 68 § 9.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.46.100 Information to be furnished purchaser in contract—Information to be furnished purchaser of unconstructed crypts or niches or undeveloped graves. Every prearrangement contract shall contain language which informs the purchaser of the prearrangement trust fund and the amount to be deposited in the prearrangement trust fund, which shall not be less than fifty percent of the cash purchase price of the merchandise and services in the contract and shall not include charges for endowment care when included in the purchase price.

Every prearrangement contract shall contain language prominently featured on the face of the contract disclosing to the purchaser what items will be delivered before need, either stored or installed, and thus not subject to funding or refund.

Every prearrangement contract for the sale of unconstructed crypts or niches or undeveloped graves and every conveyance instrument shall contain language which informs the purchaser that if the purchaser dies before the unconstructed crypt or niche or undeveloped grave is constructed or developed the cemetery authority must provide, without additional cost or charge, a constructed crypt or niche or developed grave of equal or better quality than the unconstructed crypt or niche or undeveloped grave

would have been if it were constructed or developed. [1987 c 331 § 53; 1984 c 53 § 5; 1973 1st ex.s. c 68 § 10.]

68.46.110 Compliance required. No cemetery authority shall sell, offer to sell or authorize the sale of cemetery merchandise or services or accept funds in payment of any prearrangement contract, either directly or indirectly, unless such acts are performed in compliance with chapter 68, Laws of 1973 1st ex. sess., and under the authority of a valid, subsisting and unsuspended certificate of authority to operate a cemetery in this state by the Washington state cemetery board. [1973 1st ex.s. c 68 § 11.]

68.46.125 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 54.]

68.46.130 Exemptions from chapter granted by board. The cemetery board may grant an exemption from any or all of the requirements of this chapter relating to prearrangement contracts to any cemetery authority which:

- (1) Sells less than twenty prearrangement contracts per year; and
- (2) Deposits one hundred percent of all funds received into a trust fund under RCW 68.46.030, as now or hereafter amended. [1979 c 21 § 43.]

68.46.150 Sales licenses—Qualifications. To qualify for and hold a prearrangement sales license a cemetery authority must comply with and qualify according to the provisions of this chapter. [1979 c 21 § 40.]

68.46.160 Contract forms—Filing. No cemetery authority shall use a prearrangement contract without first filing the form of such contract with the board: PROVIDED, That the board may order the cemetery authority to cease using any prearrangement contract form which:

- (1) Is in violation of any provision of this chapter;
- (2) Is misleading or deceptive; or
- (3) Is being used in connection with solicitation by false, misleading or deceptive advertising or sales practices.

Use of a prearrangement contract form which is not on file with the board or which the board has ordered the cemetery authority not to use shall be a violation of this chapter. [1979 c 21 § 38.]

68.46.170 Sales licenses—Requirement. No cemetery authority shall enter into prearrangement contracts in this state unless the cemetery authority has obtained a prearrangement sales license issued by the board or its authorized representative and such license is then current and valid. [1979 c 21 § 23.]

68.46.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.50 HUMAN REMAINS

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Veterans and relatives: Chapter 73.24 RCW.

68.50.010 Coroner's jurisdiction over remains. The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the thirty-six hours preceding death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or post mortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever, or where death results from a known or suspected abortion; whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation or smothering; or where death is due to premature birth or still birth; or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner, which bodies may be removed and placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary. [1963 c 178 § 1; 1953 c 188 § 1; 1917 c 90 § 3; RRS § 6042. Formerly RCW 68.08.010.]

68.50.015 Immunity for determining cause and manner of death—Judicial review of determination. A county coroner or county medical examiner or persons acting in that capacity shall be immune from civil liability for

determining the cause and manner of death. The accuracy of the determinations is subject to judicial review. [1987 c 263 § 1.]

68.50.020 Notice to coroner—Penalty. It shall be the duty of every person who knows of the existence and location of a dead body coming under the jurisdiction of the coroner as set forth in RCW 68.50.010, to notify the coroner thereof in the most expeditious manner possible, unless such person shall have good reason to believe that such notice has already been given. Any person knowing of the existence of such dead body and not having good reason to believe that the coroner has notice thereof and who shall fail to give notice to the coroner as aforesaid, shall be guilty of a misdemeanor. [1987 c 331 § 55; 1917 c 90 § 4; RRS § 6043. Formerly RCW 68.08.020.]

68.50.032 Transportation of remains directed by coroner or medical examiner—Costs. Whenever a coroner or medical examiner assumes jurisdiction over human remains and directs transportation of those remains by a funeral establishment, as defined in RCW 18.39.010, the reasonable costs of transporting shall be borne by the county if: (1) The funeral establishment transporting the remains is not providing the funeral or disposition services; or (2) the funeral establishment providing the funeral or disposition services is required to transport the remains to a facility other than its own.

Except as provided in RCW 36.39.030, 68.52.030, and 73.08.070, any transportation costs or other costs incurred after the coroner or medical examiner has released jurisdiction over the human remains shall not be borne by the county. [1991 c 176 § 1.]

68.50.035 Unlawful to refuse burial to non-Caucasian. It shall be unlawful for any cemetery under this chapter to refuse burial to any person because such person may not be of the Caucasian race. [1953 c 290 § 53. Formerly RCW 68.05.260.]

Reviser's note: RCW 68.50.035 (formerly RCW 68.05.260) was declared unconstitutional in *Price v. Evergreen Cemetery Co. of Seattle* (1960) 157 Wash. Dec. 249.

68.50.040 Deceased's effects to be listed. Duplicate lists of all jewelry, moneys, papers, and other personal property of the deceased shall be made immediately upon finding the same by the coroner or his assistants. The original of such lists shall be kept as a public record at the morgue and the duplicate thereof shall be forthwith duly certified to by the coroner and filed with the county auditor. [1917 c 90 § 6; RRS § 6045. Formerly RCW 68.08.040.]

68.50.050 Removal or concealment of body—Penalty. Any person, not authorized by the coroner or his deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person

who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year or by both fine and imprisonment in the discretion of the court. [1917 c 90 § 7; RRS § 6046. Formerly RCW 68.08.050.]

68.50.060 Bodies for instruction purposes. Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. [1891 c 123 § 1; RRS § 10026. Formerly RCW 68.08.060.]

68.50.070 Bodies, when may be used for dissection. Any sheriff, coroner, keeper or superintendent of a county poorhouse, public hospital, county jail, or state institution shall surrender the dead bodies of persons required to be buried at the public expense, to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students. If the deceased person during his last sickness requested to be buried, or if within thirty days after his death some person claiming to be a relative or a responsible officer of a church organization with which the deceased at the time of his death was affiliated requires the body to be buried, his body shall be buried. [1959 c 23 § 1; 1953 c 224 § 2; 1891 c 123 § 2; RRS § 10027. Formerly RCW 68.08.070.]

68.50.080 Certificate and bond before receiving bodies. Every physician or surgeon before receiving the dead body must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose in this state only, and so as in no event to outrage the public feeling. [1891 c 123 § 3; RRS § 10028. Formerly RCW 68.08.080.]

68.50.090 Penalty. Any person violating any provision of RCW 68.50.060 through 68.50.080 shall upon conviction thereof be fined in any sum not exceeding five hundred dollars. [1987 c 331 § 56; 1891 c 123 § 4; RRS § 10029. Formerly RCW 68.08.090.]

68.50.100 Dissection, when permitted—Autopsy of person under the age of three years. The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he may authorize dissection; and cases where the spouse or next of kin charged by law with the duty of burial shall authorize dissection for the purpose

of ascertaining the cause of death, and then only to the extent so authorized: PROVIDED, That the coroner, in his discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or post mortem in any case in which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death. Every person who shall make, cause, or procure to be made any dissection of a body, except as above provided, shall be guilty of a gross misdemeanor. [1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489. Formerly RCW 68.08.100.]

68.50.101 Autopsy, post mortem—Who may authorize. Autopsy or post mortem may be performed in any case where authorization has been given by a member of one of the following classes of persons in the following order of priority:

- (1) The surviving spouse;
- (2) Any child of the decedent who is eighteen years of age or older;
- (3) One of the parents of the decedent;
- (4) Any adult brother or sister of the decedent;
- (5) A person who was guardian of the decedent at the time of death;
- (6) Any other person or agency authorized or under an obligation to dispose of the remains of the decedent. The chief official of any such agency shall designate one or more persons to execute authorizations pursuant to the provisions of this section.

If the person seeking authority to perform an autopsy or post mortem makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class, in the order of descending priority. However, no person under this section shall have the power to authorize an autopsy or post mortem if a person of higher priority under this section has refused such authorization: PROVIDED, That this section shall not affect autopsies performed pursuant to RCW 68.50.010 or 68.50.103. [1987 c 331 § 57; 1977 c 79 § 1; 1953 c 188 § 11. Formerly RCW 68.08.101.]

68.50.102 Court petition for autopsy—Cost. Any party by showing just cause may petition the court to have autopsy made and results thereof made known to said party at his own expense. [1953 c 188 § 12. Formerly RCW 68.08.102.]

68.50.103 Autopsies in industrial deaths. In an industrial death where the cause of death is unknown, and where the department of labor and industries is concerned, said department in its discretion, may request the coroner in writing to perform an autopsy to determine the cause of death. The coroner shall be required to promptly perform such autopsy upon receipt of the written request from the

department of labor and industries. [1953 c 188 § 6. Formerly RCW 68.08.103.]

68.50.104 Cost of autopsy. The cost of autopsy shall be borne by the county in which the autopsy is performed, except when requested by the department of labor and industries, in which case, the department shall bear the cost of such autopsy; and except when performed on a body of an infant under the age of three years by the University of Washington medical school, in which case the medical school shall bear the cost of such autopsy.

When the county bears the cost of an autopsy, it shall be reimbursed from the *death investigations' account, established by RCW 43.79.445, as follows:

(1) Up to forty percent of the cost of contracting for the services of a pathologist to perform an autopsy; and

(2) Up to twenty-five percent of the salary of pathologists who are primarily engaged in performing autopsies and are (a) county coroners or county medical examiners, or (b) employees of a county coroner or county medical examiner.

Payments from the account shall be made pursuant to biennial appropriation: PROVIDED, That no county may reduce funds appropriated for this purpose below 1983 budgeted levels. [1983 1st ex.s. c 16 § 14; 1963 c 178 § 3; 1953 c 188 § 7. Formerly RCW 68.08.104.]

***Reviser's note:** The "death investigations' account" was redesignated the "death investigations account" by 1997 c 454 § 901.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions. Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.50.103.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. [1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 9. Formerly RCW 68.08.105.]

68.50.106 Autopsies, post mortems—Analyses—Opinions—Evidence—Costs. In any case in which an autopsy or post mortem is performed, the coroner or medical examiner, upon his or her own authority or upon the request of the prosecuting attorney or other law enforcement agency having jurisdiction, may make or cause to be made an analysis of the stomach contents, blood, or organs, or tissues of a deceased person and secure professional opinions thereon and retain or dispose of any specimens or organs of the deceased which in his or her discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicolog-

ical examination or upon lawful request are needed or desired for evidence to be presented in court. Costs shall be borne by the county. [1993 c 228 § 19; 1987 c 331 § 59; 1975-'76 2nd ex.s. c 28 § 1; 1953 c 188 § 10. Formerly RCW 68.08.106.]

68.50.107 State toxicological laboratory established—State toxicologist. There shall be established in conjunction with the University of Washington Medical School and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council shall appoint a toxicologist as state toxicologist. The laboratory shall be funded by disbursement from the *class H license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445. [1995 c 398 § 10; 1986 c 87 § 2; 1983 1st ex.s. c 16 § 10; 1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13. Formerly RCW 68.08.107.]

***Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31, effective July 1, 1998. "Full service restaurant and full service private club licenses" were subsequently redesignated as "spirits, beer, and wine restaurant licenses" by 1998 c 126 § 5.

Effective date—1986 c 87: See note following RCW 66.08.180.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

State forensic investigations council: Chapter 43.103 RCW.

68.50.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation. No dead body upon which the coroner, or prosecuting attorney, if there be no coroner in the county, may perform an autopsy or post mortem, shall be embalmed or cremated without the consent of the coroner having jurisdiction, and failure to obtain such consent shall be a misdemeanor: PROVIDED, That such autopsy or post mortem must be performed within five days, unless the coroner shall obtain an order from the superior court extending such time. [1953 c 188 § 8. Formerly RCW 68.08.108.]

68.50.110 Burial or cremating. Except in cases of dissection provided for in RCW 68.50.100, and where a dead body shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [1987 c 331 § 60; 1909 c 249 § 238; RRS § 2490. Formerly RCW 68.08.110.]

68.50.120 Holding body for debt—Penalty. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a gross misdemeanor. [1943 c 247 § 27; Rem. Supp. 1943 § 3778-27. Formerly RCW 68.08.120.]

68.50.130 Unlawful disposal of remains. Every person who permanently deposits or disposes of any human remains, except as otherwise provided by law, in any place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor. [1943 c 247 § 28; Rem. Supp. 1943 § 3778-28. Formerly RCW 68.08.130.]

68.50.135 Individual's remains—Burial on island solely owned by individual, immediate family, or estate. The human remains of an individual may be buried on the property of the individual or the individual's immediate family or estate if such property is an island in the sole ownership of the individual, or the individual's immediate family or estate, without obtaining a permit or a variance from any zoning ordinance if in compliance with other applicable state laws. [1984 c 53 § 7. Formerly RCW 68.08.135.]

68.50.140 Opening graves—Stealing body—Receiving same. Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove said body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both. [1992 c 7 § 44; 1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.50.145. Formerly RCW 68.08.140.]

68.50.145 Removing remains—Penalty. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both. [1992 c 7 § 45; 1943 c 247 § 25; Rem. Supp. 1943 c 3778-25. Formerly RCW 68.08.140, part, and 68.08.145.]

68.50.150 Mutilating, disinterring human remains—Penalty. Every person who mutilates, disinters, or removes from the place of interment any human remains without authority of law, shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both. [1992 c 7 § 46; 1943 c 247 § 26; Rem. Supp. 1943 § 3778-26. Formerly RCW 68.08.150.]

68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost. (1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

- (a) The surviving spouse.
- (b) The surviving adult children of the decedent.
- (c) The surviving parents of the decedent.
- (d) The surviving siblings of the decedent.
- (e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent. [1993 c 297 § 1; 1992 c 108 § 1; 1943 c 247 § 29; Rem. Supp. 1943 § 3778-29. Formerly RCW 68.08.160.]

County burial of indigent deceased veterans: RCW 73.08.070.

Disposal of remains of indigent persons: RCW 36.39.030.

Order of payment of debts of estate: RCW 11.76.110.

68.50.165 Embalming services—When provided without charge. If embalming services are not desired nor required for the type of arrangements chosen by the authorized family member or representative and a refrigeration unit is unavailable for use, embalming services shall be provided without charge in instances where the body is to be held more than twenty-four hours. [1985 c 402 § 2. Formerly RCW 68.08.165.]

Legislative finding—1985 c 402: "The legislature finds that certain practices in storing human remains and in performing cremations violate common notions of decency and generally held expectations. In enacting this legislation, the legislature is reaffirming that certain practices, which have never been acceptable, violate principles of human dignity." [1985 c 402 § 1.]

68.50.170 Effect of authorization. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty. [1943 c 247 § 30; Rem. Supp. 1943 § 3778-30. Formerly RCW 68.08.170.]

68.50.180 Right to rely on authorization—State agency funding for cremation. The cemetery authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A cemetery authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue.

In the event the state of Washington or any of its agencies provide the funds for the disposition of any remains and the state or its agency elects to provide the funds for cremation only, the cemetery authority or licensed funeral establishment shall not be criminally or civilly liable for cremating the remains.

If a cemetery authority with a permit issued under RCW 68.05.175 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the persons cited in RCW 68.50.160 or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to cremate executed by the most responsible party available, and the cemetery authority or funeral establishment shall not be criminally or civilly liable for cremating the remains. [1993 c 43 § 5; 1979 c 21 § 14; 1943 c 247 § 31; Rem. Supp. 1943 § 3778-31. Formerly RCW 68.08.180.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

68.50.185 Individual cremation—Exception—Penalty. (1) A person authorized to dispose of human remains shall not cremate or cause to be cremated more than one body at a time unless written permission, after full and adequate disclosure regarding the manner of cremation, has been received from the person or persons under RCW 68.50.160 having the authority to order cremation. This restriction shall not apply when equipment, techniques, or devices are employed that keep human remains separate and distinct before, during, and after the cremation process.

(2) Violation of this section is a gross misdemeanor. [1987 c 331 § 61; 1985 c 402 § 3. Formerly RCW 68.08.185.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.50.190 Liability for damages—Limitation. No action shall lie against any cemetery authority relating to the remains of any person which have been left in its possession for a period of two years, unless a written contract has been entered into with the cemetery authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a cemetery in the state of Washington. [1943 c 247 § 32; Rem. Supp. 1943 § 3778-32. Formerly RCW 68.08.190.]

Limitation of actions: Chapter 4.16 RCW.

68.50.200 Permission to remove remains. The remains of a deceased person may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: **PROVIDED**, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [1943 c 247 § 33; Rem. Supp. 1943 § 3778-33. Formerly RCW 68.08.200.]

68.50.210 Notice for order to remove remains. Notice of application to the court for such permission shall be given, at least ten days prior thereto, personally, or at least fifteen days prior thereto if by mail, to the cemetery authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court. [1943 c 247 § 34; Rem. Supp. 1943 § 3778-34. Formerly RCW 68.08.210.]

68.50.220 Exceptions. RCW 68.50.200 and 68.50.210 do not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of remains upon order of court or coroner. [1987 c 331 § 62; 1943 c 247 § 35; Rem. Supp. 1943 § 3778-35. Formerly RCW 68.08.220.]

68.50.230 Undisposed remains—Rules. Whenever any dead human body shall have been in the lawful possession of any person, firm, corporation or association for a period of one year or more, or whenever the incinerated remains of any dead human body have been in the lawful possession of any person, firm, corporation or association for a period of two years or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect or refuse for such periods of time, respectively, to direct the disposition to be made of such body or remains, such body or remains may be disposed of by the person, firm, corpora-

tion or association having such lawful possession thereof, under and in accordance with rules adopted by the cemetery board and the board of funeral directors and embalmers, not inconsistent with any statute of the state of Washington or rule or regulation prescribed by the state board of health. [1985 c 402 § 9; 1979 c 158 § 218; 1937 c 108 § 14; RRS § 8323-3. Formerly RCW 68.08.230.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.50.232 Undisposed remains—Entrusting to funeral homes or mortuaries. See RCW 36.24.155.

68.50.240 Record of remains to be kept. The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under his charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director. [1943 c 247 § 39; Rem. Supp. 1943 § 3778-39. Formerly RCW 68.08.240.]

68.50.250 Crematory record of caskets. No crematory shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto. [1943 c 247 § 57; Rem. Supp. 1943 § 3778-57. FORMER PART OF SECTION: 1943 c 247 § 58 now codified as RCW 68.50.260. Formerly RCW 68.20.100.]

68.50.260 Crematory record of caskets—Penalty. Each person violating any provision of *RCW 68.20.100 shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 58; Rem. Supp. 1943 § 3778-58. Formerly RCW 68.20.100, part, and 68.20.105.]

*Reviser's note: RCW 68.20.100 was recodified as RCW 68.50.250 pursuant to 1987 c 331 § 89.

68.50.270 Possession of cremated remains. The person or persons determined under RCW 68.50.160 as having authority to order cremation shall be entitled to possession of the cremated remains without further intervention by the state or its political subdivisions. [1987 c 331 § 63; 1977 c 47 § 4. Formerly RCW 68.08.245.]

68.50.290 Corneal tissue for transplantation—Presumption of good faith. In any subsequent civil action in which the next of kin of a decedent contends that he/she affirmatively informed the county coroner or medical examiner or designee of his/her objection to removal of corneal tissue from the decedent, it shall be presumed that the county coroner or medical examiner acted in good faith and without knowledge of the objection. [1975-'76 2nd ex.s. c 60 § 2. Formerly RCW 68.08.305.]

68.50.300 Release of information concerning a death. (1) The county coroner, medical examiner, or

prosecuting attorney having jurisdiction may in such official's discretion release information concerning a person's death to the media and general public, in order to aid in identifying the deceased, when the identity of the deceased is unknown to the official and when he does not know the information to be readily available through other sources.

(2) The county coroner, medical examiner, or prosecuting attorney may withhold any information which directly or indirectly identifies a decedent until either:

(a) A notification period of forty-eight hours has elapsed after identification of the decedent by such official; or

(b) The next of kin of the decedent has been notified.

During the forty-eight hour notification period, such official shall make a good faith attempt to locate and notify the next of kin of the decedent. [1981 c 176 § 2. Formerly RCW 68.08.320.]

68.50.310 Dental identification system established—Powers and duties. A dental identification system is established in the identification section of the Washington state patrol. The dental identification system shall act as a repository or computer center or both for dental examination records and it shall be responsible for comparing such records with dental records filed under RCW 68.50.330. It shall also determine which scoring probabilities are the highest for purposes of identification and shall submit such information to the coroner or medical examiner who prepared and forwarded the dental examination records. Once the dental identification system is established, operating funds shall come from the state general fund. [1987 c 331 § 65; 1983 1st ex.s. c 16 § 15. Formerly RCW 68.08.350.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.320 Persons missing thirty days or more—Request for consent to obtain dental records—Submission of dental records to dental identification system—Records to be erased when person found—Availability of files. When a person reported missing has not been found within thirty days of the report, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records.

When a person reported missing has not been found within thirty days, the sheriff, chief of police, or other law enforcement authority initiating and conducting the investigation for the missing person shall confer with the county coroner or medical examiner prior to the preparation of a missing person's report. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement authority shall submit a missing person's report and the dental records received under this section to the dental identification system of the state patrol *identification and criminal history section on forms supplied by the state patrol for such purpose.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or

other law enforcement authority shall report such information to the state patrol. The dental identification system shall then erase all records with respect to such person.

The dental identification system shall maintain a file of information regarding persons reported to it as missing and who have not been reported found. The file shall contain the information referred to in this section and such other information as the state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons. [1984 c 17 § 18; 1983 1st ex.s. c 16 § 16. Formerly RCW 68.08.355.]

***Reviser's note:** The "identification and criminal history section" has been redesignated the "identification, child abuse, and criminal history section." See RCW 43.43.700.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

Missing children clearinghouse and hot line: Chapter 13.60 RCW.

68.50.330 Identification of body or human remains by dental examination—Comparison of dental examination records with dental records of dental identification system. If the county coroner or county medical examiner investigating a death is unable to establish the identity of a body or human remains by visual means, fingerprints, or other identifying data, he or she shall have a qualified dentist, as determined by the county coroner or county medical examiner, carry out a dental examination of the body or human remains. If the county coroner or county medical examiner with the aid of the dental examination and other identifying findings is still unable to establish the identity of the body or human remains, he or she shall prepare and forward such dental examination records to the dental identification system of the state patrol *identification and criminal history section on forms supplied by the state patrol for such purposes.

The dental identification system shall act as a repository or computer center or both with respect to such dental examination records. It shall compare such dental examination records with dental records filed with it and shall determine which scoring probabilities are the highest for the purposes of identification. It shall then submit such information to the county coroner or county medical examiner who prepared and forwarded the dental examination records. [1984 c 17 § 19; 1983 1st ex.s. c 16 § 17. Formerly RCW 68.08.360.]

***Reviser's note:** The "identification and criminal history section" has been redesignated the "identification, child abuse, and criminal history section." See RCW 43.43.700.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901

68.50.500 Identification of potential donors—Hospital procedures. Each hospital shall develop procedures for identifying potential anatomical parts donors. The procedures shall require that any deceased individual's next of kin or other individual, as set forth in RCW 68.50.550, and the medical record does not specify the deceased as a donor, at or near the time of notification of death be asked whether the deceased was a part donor. If not, the family shall be informed of the option to donate parts pursuant to

the uniform anatomical gift act. With the approval of the designated next of kin or other individual, as set forth in RCW 68.50.550, the hospital shall then notify an established procurement organization including those organ procurement agencies associated with a national organ procurement transportation network or other eligible donee, as specified in RCW 68.50.570, and cooperate in the procurement of the anatomical gift or gifts. The procedures shall encourage reasonable discretion and sensitivity to the family circumstances in all discussions regarding donations of parts. The procedures may take into account the deceased individual's religious beliefs or obvious nonsuitability for an anatomical parts donation. Laws pertaining to the jurisdiction of the coroner shall be complied with in all cases of reportable deaths pursuant to RCW 68.50.010. [1993 c 228 § 20; 1987 c 331 § 71; 1986 c 129 § 1. Formerly RCW 68.08.650.]

68.50.510 Good faith compliance with RCW 68.50.500—Hospital liability. No act or omission of a hospital in developing or implementing the provisions of RCW 68.50.500, when performed in good faith, shall be a basis for the imposition of any liability upon the hospital.

This section shall not apply to any act or omission of the hospital that constitutes gross negligence or wilful and wanton conduct. [1987 c 331 § 72; 1986 c 129 § 2. Formerly RCW 68.08.660.]

68.50.520 Anatomical gifts—Findings—Declaration. The legislature finds that:

(1) The demand for donor organs and body parts exceeds the available supply for transplant.

(2) The discussion regarding advance directives including anatomical gifts is most appropriate with the primary care provider during an office visit.

(3) Federal law requires hospitals, skilled nursing facilities, home health agencies, and hospice programs to provide information regarding advance directives.

(4) Discretion and sensitivity must be used in discussion and requests for anatomical gifts.

The legislature declares that it is in the best interest of the citizens of Washington to provide a program that will increase the number of anatomical gifts available for donation, and the legislature further declares that wherever possible policies and procedures required in this chapter shall be consistent with the federal requirements. [1993 c 228 § 1.]

68.50.530 Anatomical gifts—Definitions. Unless the context requires otherwise, the definitions in this section apply throughout RCW 68.50.520 through 68.50.630 and 68.50.901 through 68.50.904.

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual.

(3) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(4) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

(5) "Enucleator" means an individual who is qualified to remove or process eyes or parts of eyes.

(6) "Hospital" means a facility licensed under chapter 70.41 RCW, or as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(9) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under chapters 18.71 and 18.57 RCW.

(10) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(11) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(12) "Technician" means an individual who is qualified to remove or process a part. [1996 c 178 § 15; 1993 c 228 § 2.]

Effective date—1996 c 178: See note following RCW 18.35.110.

68.50.540 Anatomical gifts—Authorized—Procedures—Changes—Refusal. (1) An individual who is at least eighteen years of age, or an individual who is at least sixteen years of age as provided in subsection (12) of this section, may (a) make an anatomical gift for any of the purposes stated in RCW 68.50.570(1), (b) limit an anatomical gift to one or more of those purposes, or (c) refuse to make an anatomical gift.

(2) An anatomical gift may be made by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other and state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) The donee or other person authorized to accept the anatomical gift may employ or authorize a physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift, not made by will, by:

(a) A signed statement;

(b) An oral statement made in the presence of two individuals;

(c) Any form of communication during a terminal illness or injury; or

(d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6) of this section.

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of a person after the donor's death.

(9) An individual may refuse to make an anatomical gift of the individual's body or part by (a) a writing signed in the same manner as a document of gift, (b) a statement attached to or imprinted on a donor's motor vehicle operator's license, or (c) another writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under RCW 68.50.550.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9) of this section.

(12) An individual who is under the age of eighteen, but is at least sixteen years of age, may make an anatomical gift as provided by subsection (2) of this section, if the document of gift is also signed by either parent or a guardian of the donor. A document of gift signed by a donor under the age of eighteen that is not signed by either parent or a guardian shall not be considered valid until the person reaches the age of eighteen, but may be considered as evidence that the donor has not refused permission to make an anatomical gift under the provisions of RCW 68.50.550. [1995 c 132 § 1; 1993 c 228 § 3.]

68.50.550 Anatomical gifts—By person other than decedent. (1) A member of the following classes of persons, in the order of priority listed, absent contrary instructions by the decedent, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

(a) The appointed guardian of the person of the decedent at the time of death;

(b) The individual, if any, to whom the decedent had given a durable power of attorney that encompassed the authority to make health care decisions;

(c) The spouse of the decedent;

(d) A son or daughter of the decedent who is at least eighteen years of age;

(e) Either parent of the decedent;

(f) A brother or sister of the decedent who is at least eighteen years of age;

(g) A grandparent of the decedent.

(2) An anatomical gift may not be made by a person listed in subsection (1) of this section if:

(a) A person in a prior class is available at the time of death to make an anatomical gift;

(b) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(c) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) of this section must be made by (a) a document of gift signed by the person or (b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient of the communication.

(4) An anatomical gift by a person authorized under subsection (1) of this section may be revoked by a member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(5) A failure to make an anatomical gift under subsection (1) of this section is not an objection to the making of an anatomical gift. [1993 c 228 § 4.]

68.50.560 Anatomical gifts—Hospital procedure—Records—Liability. (1) On or before admission to a hospital, or as soon as possible thereafter, a person designated by the hospital shall ask each patient who is at least eighteen years of age: "Are you an organ or tissue donor?" If the answer is affirmative the person shall request a copy of the document of gift. If the answer is negative or there is no answer, the person designated shall provide the patient information about the right to make a gift and shall ask the patient if he or she wishes to become an anatomical parts donor. If the answer is affirmative, the person designated shall provide a document of gift to the patient. The answer to the questions, an available copy of any document of gift or refusal to make an anatomical gift, and any other relevant information shall be placed in the patient's medical record.

(2) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift under RCW 68.50.550(1). The request shall be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in RCW 68.50.570. An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made. The secretary of the department of health shall adopt rules to implement this subsection.

(3) The following persons shall make a reasonable search of the individual and his or her personal effects for a document of gift or other information identifying the bearer

as a donor or as an individual who has refused to make an anatomical gift:

(a) The agency assuming jurisdiction over the decedent, such as the coroner or medical examiner; or

(b) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available another source of that information.

(4) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (3)(a) of this section, and the individual or body to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the document or other evidence shall be sent to the hospital.

(5) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made under RCW 68.50.550(1), or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the procurement of the anatomical gift or release and removal of a part.

(6) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability.

(7) Hospitals shall develop policies and procedures to implement this section. [1993 c 228 § 5.]

68.50.570 Anatomical gifts—Donees. (1) The following persons may become donees of anatomical gifts for the purposes stated:

(a) A hospital, physician, surgeon, or procurement organization for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;

(b) An accredited medical or dental school, college, or university for education, research, or advancement of medical or dental science; or

(c) A designated individual for transplantation or therapy needed by that individual.

(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

(3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift made by a member of a class having priority to act is opposed by a member of the same class or a prior class under RCW 68.50.550(1), the donee may not accept the anatomical gift. [1993 c 228 § 6.]

68.50.580 Anatomical gifts—Document of gift—Delivery. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in a hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after

the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift. [1993 c 228 § 7.]

68.50.590 Anatomical gifts—Rights of donee—Time of death—Actions by technician, enucleator. (1) Rights of a donee created by an anatomical gift are superior to rights of others except when under the jurisdiction of the coroner or medical examiner. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part.

(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon. [1993 c 228 § 8.]

68.50.600 Anatomical gifts—Hospitals—Procurement and use coordination. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts. [1993 c 228 § 9.]

68.50.610 Anatomical gifts—Illegal purchase or sale—Penalty. (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a felony and upon conviction is subject to a fine not exceeding fifty thousand dollars or imprisonment not exceeding five years, or both. [1993 c 228 § 10.]

68.50.620 Anatomical gifts—Examination for medical acceptability—Jurisdiction of coroner, medical examiner—Liability limited. (1) An anatomical gift authorizes reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(2) The provisions of RCW 68.50.520 through 68.50.630 and 68.50.901 through 68.50.904 are subject to the laws of this state governing the jurisdiction of the coroner or medical examiner.

(3) A hospital, physician, surgeon, coroner, medical examiner, local public health officer, enucleator, technician,

or other person, who acts in accordance with RCW 68.50.520 through 68.50.630 and 68.50.901 through 68.50.904 or with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so, is not liable for that act in a civil action or criminal proceeding.

(4) An individual who makes an anatomical gift under RCW 68.50.540 or 68.50.550 and the individual's estate are not liable for injury or damage that may result from the making or the use of the anatomical gift. [1993 c 228 § 11.]

68.50.630 Anatomical gifts—Corneal tissue. In any case where a patient is in need of corneal tissue for a transplantation, corneal tissue may be provided by eye banks licensed by the secretary of health under rules promulgated by the department of health. [1993 c 228 § 15.]

68.50.900 Effective date—1987 c 331. See RCW 68.05.900.

68.50.901 Application—1993 c 228. RCW 68.50.520 through 68.50.630 and 68.50.901 through 68.50.904 apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after July 25, 1993. [1993 c 228 § 12.]

68.50.902 Application—Construction—1993 c 228. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1993 c 228 § 13.]

68.50.903 Severability—1993 c 228. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 228 § 14.]

68.50.904 Short title—1993 c 228. RCW 68.50.520 through 68.50.630 and 68.50.901 through 68.50.903 may be cited as the "uniform anatomical gift act." [1993 c 228 § 16.]

Chapter 68.52

PUBLIC CEMETERIES AND MORGUES

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68.52.010 Morgues authorized in counties. The county legislative authority of each county may at its discretion provide and equip a public morgue together with suitable morgue wagon for the conveyance, receipt and proper disposition of the bodies of all deceased persons not claimed by relatives, and of all dead bodies which are by law subject to a post mortem or coroner's inquest: PROVIDED, HOWEVER, That only one public morgue may be established in any county: PROVIDED FURTHER, That counties may agree to establish joint morgue facilities pursuant to chapter 39.34 RCW. [1983 1st ex.s. c 16 § 19; 1917 c 90 § 1; RRS § 6040. Formerly RCW 68.12.010.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901

68.52.020 Coroner to control morgue—Expense. Such morgue shall be under the control and management of the coroner who shall have power with the advice and consent of the county commissioners, to employ the necessary deputies and employees; and, with the advice and consent of the county commissioners, to fix their salaries and compensation, which, together with the expenses of operating such morgue, shall be paid monthly out of the county treasury. [1917 c 90 § 2; RRS § 6041. Formerly RCW 68.12.020.]

68.52.030 Counties and cities may provide for burial, acquire cemeteries, etc. Each and every county, town or city, shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations and fence the same, and to preserve the monuments erected therein, and to

levy and collect the necessary taxes for that purpose, in the same manner as other taxes are levied and collected. [1857 p 28 § 3; RRS § 3772. Formerly RCW 68.12.030.]

68.52.040 Cities and towns may own, improve, etc., cemeteries. Any city or town may acquire, hold, or improve land for cemetery purposes, and may sell lots therein, and may provide by ordinance that a specified percentage of the proceeds therefrom be set aside and invested, and the income from the investment be used in the care of the lots, and may take and hold any property devised, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of the cemeteries or the erection or preservation of structures, fences, or walks therein, or for the repair, preservation, erection, or renewal of any tomb, monument, gravestone, fence, railing, or other erection at or around a cemetery, lot, or plat, or for planting and cultivating trees, shrubs, flowers, or plants in or around the lot or plot, or for improving or embellishing the cemetery in any other manner or form consistent with the design and purpose of the city, according to the terms of the grant, devise, or bequest. [1955 c 378 § 1; 1909 c 156 § 1; RRS § 3773. Formerly RCW 68.12.040.]

68.52.045 Cities and towns may provide for a cemetery board. The legislative body of any city or town may provide by ordinance for a cemetery board to be appointed by the mayor in cities and towns operating under the mayor-council form of government, by the city commission in cities operating under the commission form of government, and by the city manager in cities and towns operating under the council-manager form of government: PROVIDED FURTHER, That no ordinance shall be enacted, pursuant to this section, in conflict with provisions contained in charters of cities of the first class. [1955 c 378 § 2. Formerly RCW 68.12.045.]

68.52.050 Cemetery improvement fund. All moneys received in the manner above provided shall be deposited with the city treasurer, and shall be kept apart in a fund known as the cemetery improvement fund, and shall be paid out only upon warrants drawn by the order of the cemetery board, if such a board exists, or by order of the body, department, commission, or committee duly authorized by ordinance to issue such an order, or by the legislative body of a city or town, which order shall be approved by such legislative body if such order is not issued by the legislative body, and shall be indorsed by the mayor and attested by the city comptroller or other authorized officer. [1955 c 378 § 3; 1909 c 156 § 4; RRS § 3776. Formerly RCW 68.12.050.]

68.52.060 Care and investment of fund. It shall be the duty of the cemetery board and other body or commission having in charge the care and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust for the purposes designated herein: PROVIDED, HOWEVER, That all investments shall be made in municipal, county, school or state bonds, general obligation warrants of the city owning such cemetery, or in first mortgages on good and improved real estate. [1933 c

91 § 1; 1909 c 156 § 2; RRS § 3774. FORMER PART OF SECTION: 1909 c 156 § 3 now codified as RCW 68.52.065. Formerly RCW 68.12.060.]

68.52.065 Approval of investments. All investments shall be approved by the council or legislative body of the city. [1909 c 156 § 3; RRS § 3775. Formerly RCW 68.12.060, part, and 68.12.065.]

68.52.070 Cemetery fund—Management. The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in no wise be liable for any of said funds except a misappropriation thereof, and shall not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [1909 c 156 § 6; RRS § 3778. Formerly RCW 68.12.070.]

68.52.080 Books of account—Audit. Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [1909 c 156 § 5; RRS § 3777. Formerly RCW 68.12.080.]

68.52.090 Establishment authorized. Cemetery districts may be established in all counties and on any island in any county, as in this chapter provided. [1971 c 19 § 1; 1957 c 99 § 1; 1953 c 41 § 1; 1947 c 27 § 1; 1947 c 6 § 1; Rem. Supp. 1947 § 3778-150. Formerly RCW 68.16.010.]

68.52.100 Petition—Requisites—Examination. For the purpose of forming a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges and legal subdivisions, signed by not less than fifteen percent of the registered voters who reside within the boundaries of the proposed district, setting forth the object of the formation of such district and stating that the establishment thereof will be conducive to the public welfare and convenience, shall be filed with the county auditor of the county within which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice hereinafter provided for. The county auditor shall, within thirty days from the date of filing of such petition, examine the signatures and certify to the sufficiency or insufficiency thereof. The name of any person who signed a petition shall not be withdrawn from the petition after it has been filed with the county auditor. If the petition is found to contain a sufficient number of valid signatures, the county auditor shall transmit it, with a certificate of sufficiency attached, to the county legislative authority, which shall thereupon, by resolution entered upon its minutes, receive the same and fix a day and hour when it will publicly hear the petition. [1994 c 223 § 74; 1947 c 6 § 2; Rem. Supp. 1947 § 3778-151. Formerly RCW 68.16.020.]

68.52.110 Hearing—Place and date. The hearing on such petition shall be at the office of the board of county commissioners and shall be held not less than twenty nor more than forty days from the date of receipt thereof from the county auditor. The hearing may be completed on the day set therefor or it may be adjourned from time to time as may be necessary, but such adjournment or adjournments shall not extend the time for determining said petition more than sixty days in all from the date of receipt by the board. [1947 c 6 § 3; Rem. Supp. 1947 § 3778-152. Formerly RCW 68.16.030.]

68.52.120 Publication and posting of petition and notice of hearing. A copy of the petition with the names of petitioners omitted, together with a notice signed by the clerk of the board of county commissioners stating the day, hour and place of the hearing, shall be published in three consecutive weekly issues of the official newspaper of the county prior to the date of hearing. Said clerk shall also cause a copy of the petition with the names of petitioners omitted, together with a copy of the notice attached, to be posted for not less than fifteen days before the date of hearing in each of three public places within the boundaries of the proposed district, to be previously designated by him and made a matter of record in the proceedings. [1947 c 6 § 4; Rem. Supp. 1947 § 3778-153. Formerly RCW 68.16.040.]

68.52.130 Hearing—Inclusion and exclusion of lands. At the time and place fixed for hearing on the petition or at any adjournment thereof, the board of county commissioners shall hear said petition and receive such evidence as it may deem material in favor of or opposed to the formation of the district or to the inclusion therein or exclusion therefrom of any lands, but no lands not within the boundaries of the proposed district as described in the petition shall be included without a written waiver describing the land, executed by all persons having any interest of record therein, having been filed in the proceedings. No land within the boundaries described in petition shall be excluded from the district. [1947 c 6 § 5; Rem. Supp. 1947 § 3778-154. Formerly RCW 68.16.050.]

68.52.140 Election on formation of district and first commissioners. The county legislative authority shall have full authority to hear and determine the petition, and if it finds that the formation of the district will be conducive to the public welfare and convenience, it shall by resolution so declare, otherwise it shall deny the petition. If the county legislative authority finds in favor of the formation of the district, it shall designate the name and number of the district, fix the boundaries thereof, and cause an election to be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this chapter, and for the purpose of electing its first cemetery district commissioners. At the same election three cemetery district commissioners shall be elected, but the election of the commissioners shall be null and void if the district is not created. No primary shall be held for the office of cemetery district commissioner. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. Candidates shall run for specific commissioner positions.

The person receiving the greatest number of votes for each commissioner position shall be elected to that commissioner position. The terms of office of the initial commissioners shall be as provided in RCW 68.52.220. [1996 c 324 § 3; 1994 c 223 § 75; 1982 c 60 § 2; 1947 c 6 § 6; Rem. Supp. 1947 § 3778-155. Formerly RCW 68.16.060.]

68.52.150 Election, how conducted—Notice. Except as otherwise provided in this chapter, the election shall insofar as possible be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided by law for special elections in the county. For the purpose of such election county voting precincts may be combined or divided and redefined, and the territory in the district shall be included in one or more election precincts as may be deemed convenient, a polling place being designated for each such precinct. The notice of election shall state generally and briefly the purpose thereof, shall give the boundaries of the proposed district, define the election precinct or precincts, designate the polling place for each, mention the names of the candidates for first cemetery district commissioners, and name the day of the election and the hours during which the polls will be open. [1947 c 6 § 7; Rem. Supp. 1947 § 3778-156. Formerly RCW 68.16.070.]

Elections: Title 29 RCW.

68.52.155 Conformity with election laws—Exception—Vacancies. Cemetery district elections shall conform with general election laws, except that there shall be no primary to nominate candidates. All persons filing and qualifying shall appear on the general election ballot and the person receiving the largest number of votes for each position shall be elected.

A vacancy on a board of cemetery district commissioners shall occur and shall be filled as provided in chapter 42.12 RCW. [1996 c 324 § 4; 1994 c 223 § 73.]

68.52.160 Election ballot. The ballot for the election shall be in such form as may be convenient but shall present the propositions substantially as follows:

". . . (insert county name). . . cemetery district No. . . (insert number). . .

. . . Yes. . .

. . . (insert county name). . . cemetery district No. . . (insert number). . .

. . . No. . ."

[1994 c 223 § 76; 1947 c 6 § 8; Rem. Supp. 1947 § 3778-157. Formerly RCW 68.16.080.]

68.52.170 Canvass of returns—Resolution of organization. The returns of such election shall be canvassed at the court house on the Monday next following the day of the election, but the canvass may be adjourned from time to time if necessary to await the receipt of election returns which may be unavoidably delayed. The canvassing officials, upon conclusion of the canvass, shall forthwith certify the results thereof in writing to the board of county commissioners. If upon examination of the certificate of the

canvassing officials it is found that two-thirds of all the votes cast at said election were in favor of the formation of the cemetery district, the board of county commissioners shall, by resolution entered upon its minutes, declare such territory duly organized as a cemetery district under the name theretofore designated and shall declare the three candidates receiving the highest number of votes for cemetery commissioners, the duly elected first cemetery commissioners of the district. The clerk of the board of county commissioners shall certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy shall be entitled to record without payment of a recording fee. If the certificate of the canvassing officials shows that the proposition to organize the proposed cemetery district failed to receive two-thirds of the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings theretofore had shall become null and void. [1947 c 6 § 9; Rem. Supp. 1947 § 3778-158. Formerly RCW 68.16.090.]

68.52.180 Review—Organization complete. Any person, firm or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination or resolution of the board of county commissioners under the provisions of this chapter, may appeal within five days after such finding, determination or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of said board. After the expiration of five days from the date of the resolution declaring the district organized, and upon filing of certified copies thereof in the offices of the county auditor and county assessor, the formation of the district shall be complete and its legal existence shall not thereafter be questioned by any person by reason of any defect in the proceedings had for the creation thereof. [1947 c 6 § 10; Rem. Supp. 1947 § 3778-159. Formerly RCW 68.16.100.]

Appeals from action of board of county commissioners: RCW 36.32.330.

68.52.190 General powers of district. Cemetery districts created under this chapter shall be deemed to be municipal corporations within the purview of the Constitution and laws of the state of Washington. They shall constitute bodies corporate and possess all the usual powers of corporations for public purposes. They shall have full authority to carry out the objects of their creation, and to that end are empowered to acquire, hold, lease, manage, occupy and sell real and personal property or any interest therein; to enter into and perform any and all necessary contracts; to appoint and employ necessary officers, agents and employees; to contract indebtedness, to borrow money, and to issue general obligation bonds in accordance with chapter 39.46 RCW; to levy and enforce the collection of taxes against the lands within the district, and to do any and all lawful acts to effectuate the purposes of this chapter. [1984 c 186 § 58; 1967 c 164 § 6; 1947 c 6 § 11; Rem. Supp. 1947 § 3778-160. Formerly RCW 68.16.110.]

Purpose—1984 c 186: See note following RCW 39.46.110.

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

Tortious conduct of local governmental entities: RCW 4.96.010.

68.52.192 Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing. A cemetery district may jointly operate or provide, cooperate to operate and provide and/or contract for a term of not to exceed five years to provide or have provided public cemetery facilities or services, with any other public or private agency, including out of state public agencies, which each is separately authorized to operate or provide, under terms mutually agreed upon by such public or private agencies. The governing body of a cemetery district may join with any other public or private agency in buying supplies, equipment, and services collectively. [1963 c 112 § 3. Formerly RCW 68.16.112.]

68.52.193 Public cemetery facilities or services—"Public agency" defined. As used in RCW 68.52.192, "public agency" means counties, cities and towns, special districts, or quasi municipal corporations. [1987 c 331 § 73; 1963 c 112 § 2. Formerly RCW 68.16.113.]

68.52.200 Right of eminent domain. The taking and damaging of property or rights therein by any cemetery district to carry out the purposes of its creation, are hereby declared to be for a public use, and any such district shall have and exercise the power of eminent domain to acquire any property or rights therein, either inside or outside the district for the use of such district. In exercising the power of eminent domain, a district shall proceed in the manner provided by law for the appropriation of real property or rights therein by private corporations. It may at its option unite in a single action proceedings to condemn property held by separate owners. Two or more condemnation suits instituted separately may also in the discretion of the court be consolidated upon motion of any interested party into a single action. In such cases the jury shall render separate verdicts for each tract of land in different ownership. No finding of the jury or decree of the court as to damages in any condemnation suit instituted by the district shall be held or construed to destroy the right of the district to levy and collect taxes for any and all district purposes against the uncondemned land situated within the district. [1947 c 6 § 12; Rem. Supp. 1947 § 3778-161. Formerly RCW 68.16.120.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by corporations: Chapter 8.20 RCW.

68.52.210 Power to do cemetery business—District may embrace certain cities and towns—Eminent domain exception. (1) A cemetery district organized under this chapter shall have power to acquire, establish, maintain, manage, improve and operate cemeteries and conduct any and all of the businesses of a cemetery as defined in this title. A cemetery district shall constitute a cemetery authority as defined in this title and shall have and exercise all powers conferred thereby upon a cemetery authority and be subject to the provisions thereof.

(2) A cemetery district may include within its boundaries the lands embraced within the corporate limits of any incorporated city or town with a population of less than ten

thousand and in any such cases the district may acquire any cemetery or cemeteries theretofore maintained and operated by any such city or town and proceed to maintain, manage, improve and operate the same under the provisions hereof. In such event the governing body of the city or town, after the transfer takes place, shall levy no cemetery tax. The power of eminent domain heretofore conferred shall not extend to the condemnation of existing cemeteries within the district: PROVIDED, That no cemetery district shall operate a cemetery within the corporate limits of any city or town where there is a private cemetery operated for profit. [1994 c 81 § 82; 1971 c 19 § 2; 1959 c 23 § 2; 1957 c 39 § 1; 1947 c 6 § 13; Rem. Supp. 1947 § 3778-162. Formerly RCW 68.16.130.]

68.52.220 District commissioners—Compensation—Election. The affairs of the district shall be managed by a board of cemetery district commissioners composed of three members. Members of the board shall receive expenses necessarily incurred in attending meetings of the board or when otherwise engaged in district business. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to seventy dollars for each day or portion of a day devoted to the business of the district. However, the compensation for each commissioner must not exceed six thousand seven hundred twenty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. The board shall fix the compensation to be paid the secretary and other employees of the district. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17 RCW.

The initial cemetery district commissioners shall assume office immediately upon their election and qualification. Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall assume office immediately after they are elected and qualified but their terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their

successors are elected and qualified and assume office as provided in RCW 29.04.170.

The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account. [1998 c 121 § 6; 1994 c 223 § 77; 1990 c 259 § 33; 1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

68.52.250 Special elections. Special elections submitting propositions to the registered voters of the district may be called at any time by resolution of the cemetery commissioners in accordance with RCW 29.13.010 and 29.13.020, and shall be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided for the election to determine whether the district shall be created. [1990 c 259 § 34; 1947 c 6 § 17; Rem. Supp. 1947 § 3778-166. Formerly RCW 68.16.170.]

Qualifications of electors: RCW 29.07.070.

68.52.260 Oath of commissioners. Each cemetery commissioner, before assuming the duties of his office, shall take and subscribe an official oath to faithfully discharge the duties of his office, which oath shall be filed in the office of the county auditor. [1986 c 167 § 24; 1947 c 6 § 18; Rem. Supp. 1947 § 3778-167. Formerly RCW 68.16.180.]

Severability—1986 c 167: See note following RCW 29.01.055.

68.52.270 Organization of board—Secretary—Office—Meetings—Powers. The board of cemetery district commissioners shall organize and elect a chairman from their number and shall appoint a secretary for such term as they may determine. The secretary shall keep a record of proceedings of the board and perform such other duties as may be prescribed by law or by the board, and shall also take and subscribe an oath for the faithful discharge of his duties, which shall be filed with the county clerk. The office of the board of cemetery commissioners and principal place of business of the district shall be at some place in the district designated by the board. The board shall hold regular monthly meetings at its office on such day as it may by resolution determine and may adjourn such meetings as may be required for the transaction of business. Special meetings of the board may be called at any time by a majority of the commissioners or by the secretary and the chairman of the board. Any commissioner not joining in the call of a special meeting shall be entitled to three days written notice by mail of such meeting, specifying generally the business to be transacted. All meetings of the board of cemetery commissioners shall be public and a majority shall constitute a quorum. All records of the board shall be open to the inspection of any elector of the district at any meeting of the board. The board shall adopt a seal for the district; manage and conduct the affairs of the district; make and execute all necessary contracts; employ any necessary service, and promulgate reasonable rules and regulations for the government of the district and the performance of its functions and generally perform all acts which may be

necessary to carry out the purposes for which the district was formed. [1947 c 6 § 19; Rem. Supp. 1947 § 3778-168. Formerly RCW 68.16.190.]

68.52.280 Duty of county treasurer—Cemetery district fund. It shall be the duty of the county treasurer of the county in which any cemetery district is situated to receive and disburse all district revenues and collect all taxes authorized and levied under this chapter. There is hereby created in the office of county treasurer of each county in which a cemetery district shall be organized for the use of the district, a cemetery district fund. All taxes levied for district purposes when collected shall be placed by the county treasurer in the cemetery district fund. [1947 c 6 § 20; Rem. Supp. 1947 § 3778-169. Formerly RCW 68.16.200.]

68.52.290 Tax levy authorized for fund. Annually, after the county board of equalization has equalized assessments for general tax purposes, the secretary of the district shall prepare a budget of the requirements of the cemetery district fund, certify the same and deliver it to the board of county commissioners in ample time for such board to levy district taxes. At the time of making general tax levies in each year, the board of county commissioners shall levy taxes required for cemetery district purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes, and as a part of said general taxes. Such levies shall be part of the general tax roll and be collected as a part of general taxes against the property in the district. [1947 c 6 § 21; Rem. Supp. 1947 § 3778-170. Formerly RCW 68.16.210.]

68.52.300 Disbursement of fund. The county treasurer shall disburse the cemetery district fund upon warrants issued by the county auditor on vouchers approved and signed by a majority of the board of cemetery commissioners and the secretary thereof. [1947 c 6 § 22; Rem. Supp. 1947 § 3778-171. Formerly RCW 68.16.220.]

68.52.310 Limitation of indebtedness—Limitation of tax levy. The board of cemetery commissioners shall have no authority to contract indebtedness in any year in excess of the aggregate amount of the currently levied taxes, which annual tax levy for cemetery district purposes shall not exceed eleven and one-quarter cents per thousand dollars of assessed valuation. [1973 1st ex.s. c 195 § 77; 1947 c 6 § 23; Rem. Supp. 1947 § 3778-172. Formerly RCW 68.16.230.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

68.52.320 Dissolution of districts. Cemetery districts may be dissolved by a majority vote of the electors at an election called for that purpose, which shall be conducted in the same manner as provided for special elections, and no further district obligations shall thereafter be incurred, but such dissolution shall not abridge or cancel any of the outstanding obligations of the district, and the board of county commissioners shall have authority to make annual levies against the lands included within the district until the

obligations of the district are fully paid. When the obligations are fully paid, any moneys remaining in the cemetery district fund and all collections of unpaid district taxes shall be transferred to the current expense fund of the county. [1947 c 6 § 24; Rem. Supp. 1947 § 3778-173. Formerly RCW 68.16.240.]

Dissolution of districts: Chapter 53.48 RCW.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

68.52.330 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

68.52.900 Severability—1947 c 6. If any portion of this act shall be adjudged invalid or unconstitutional for any reason, such adjudication shall not affect, impair or invalidate the remaining portions of the act. [1947 c 6 § 25; no RRS. Formerly RCW 68.16.900.]

68.52.901 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.54

ANNEXATION AND MERGER OF CEMETERY DISTRICTS

Sections

68.54.010	Annexation—Petition—Procedure.
68.54.020	Merger—Authorized.
68.54.030	Merger—Petition—Procedure—Contents.
68.54.040	Merger—Petition—Rejection, concurrence or modification—Signatures.
68.54.050	Merger—Petition—Special election.
68.54.060	Merger—Petition—Election—Vote required—Merger effected.
68.54.070	Merger—Petition—When election dispensed with.
68.54.080	Merger—Preexisting obligations.
68.54.090	Merger—Transfer of all property, funds, assessments.
68.54.100	Merger and transfer of part of one district to adjacent district—Petition—Election—Vote.
68.54.110	Merger and transfer of part of one district to adjacent district—When election dispensed with.
68.54.120	Merger and transfer of part of one district to adjacent district—Preexisting indebtedness.
68.54.900	Effective date—1987 c 331.

68.54.010 Annexation—Petition—Procedure. Any territory contiguous to a cemetery district and not within the boundaries of a city or town other than as set forth in RCW 68.52.210 or other cemetery district may be annexed to such cemetery district by petition of ten percent of the registered voters residing within the territory proposed to be annexed who voted in the last general municipal election. Such petition shall be filed with the cemetery commissioners of the cemetery district and if the cemetery commissioners shall concur in the petition they shall then file such petition with the county auditor who shall within thirty days from the date of filing such petition examine the signatures thereof and certify to the sufficiency or insufficiency thereof. After the county auditor shall have certified to the sufficiency of the petition, the proceedings thereafter by the county legislative authority, and the rights and powers and duties of the county legislative authority, petitioners and objectors and the

election and canvass thereof shall be the same as in the original proceedings to form a cemetery district: PROVIDED, That the county legislative authority shall have authority and it shall be its duty to determine on an equitable basis, the amount of obligation which the territory to be annexed to the district shall assume, if any, to place the taxpayers of the existing district on a fair and equitable relationship with the taxpayers of the territory to be annexed by reason of the benefits of coming into a going district previously supported by the taxpayers of the existing district, and such obligation may be paid to the district in yearly installments to be fixed by the county legislative authority if within the limits as outlined in RCW 68.52.310 and included in the annual tax levies against the property in such annexed territory until fully paid. The amount of the obligation and the plan of payment thereof filed by the county legislative authority shall be set out in general terms in the notice of election for annexation: PROVIDED, That the special election shall be held only within the boundaries of the territory proposed to be annexed to the cemetery district. Upon the entry of the order of the county legislative authority incorporating such contiguous territory within such existing cemetery district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district in like manner as the territory of the district. Should such petition be signed by sixty percent of the registered voters residing within the territory proposed to be annexed, and should the cemetery commissioners concur therein, an election in such territory and a hearing on such petition shall be dispensed with and the county legislative authority shall enter its order incorporating such territory within the existing cemetery district. [1990 c 259 § 35; 1987 c 331 § 74; 1969 ex.s. c 78 § 1. Formerly RCW 68.18.010.]

68.54.020 Merger—Authorized. A cemetery district organized under chapter 68.52 RCW may merge with another such district lying adjacent thereto, upon such terms and conditions as they agree upon, in the manner hereinafter provided. The district desiring to merge with another district shall hereinafter be called the "merging district", and the district into which the merger is to be made shall be called the "merger district". [1990 c 259 § 36; 1969 ex.s. c 78 § 2. Formerly RCW 68.18.020.]

68.54.030 Merger—Petition—Procedure—Contents. To effect such a merger, a petition therefor shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition upon their own initiative, and they shall file such a petition when it is signed by ten percent of the registered voters resident in the merging district who voted in the last general municipal election and presented to them. The petition shall state the reasons for the merger; give a detailed statement of the district's finances, listing its assets and liabilities; state the terms and conditions under which the merger is proposed; and pray for the merger. [1990 c 259 § 37; 1969 ex.s. c 78 § 3. Formerly RCW 68.18.030.]

68.54.040 Merger—Petition—Rejection, concurrence or modification—Signatures. The board of the

merger district may, by resolution, reject the petition, or it may concur therein as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution thereon to the merging district. If the petition is concurred in as presented or as modified, the board of the merging district shall forthwith present the petition to the auditor of the county in which the merging district is situated, who shall within thirty days examine the signatures thereon and certify to the sufficiency or insufficiency thereof, and for that purpose he shall have access to all registration books and records in the possession of the registration officers of the election precincts included, in whole or in part, within the merging district. Such books and records shall be prima facie evidence of truth of the certificate. No signatures may be withdrawn from the petition after the filing. [1969 ex.s. c 78 § 4. Formerly RCW 68.18.040.]

68.54.050 Merger—Petition—Special election. If the auditor finds that the petition contains the signatures of a sufficient number of qualified electors, he shall return it, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon such board shall adopt a resolution, calling a special election in the merging district, at which shall be submitted to the electors thereof, the question of the merger. [1969 ex.s. c 78 § 5. Formerly RCW 68.18.050.]

68.54.060 Merger—Petition—Election—Vote required—Merger effected. The board of [the] merging district shall notify the board of the merger district of the results of the election. If three-fifths of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1969 ex.s. c 78 § 6. Formerly RCW 68.18.060.]

68.54.070 Merger—Petition—When election dispensed with. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary. In such case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of merger in the same manner and to the same effect as if the merger had been authorized by an election. [1969 ex.s. c 78 § 7. Formerly RCW 68.18.070.]

68.54.080 Merger—Preexisting obligations. None of the obligations of the merged districts or of a local improvement district therein shall be affected by the merger and dissolution, and all land liable to be assessed to pay any of such indebtedness shall remain liable to the same extent as

if the merger had not been made, and any assessments theretofore levied against the land shall remain unimpaired and shall be collected in the same manner as if no merger had been made. The commissioners of the merged district shall have all the powers possessed at the time of the merger by the commissioners of the two districts, to levy, assess and cause to be collected all assessments against any land in both districts which may be necessary to provide for the payment of the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: PROVIDED, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments theretofore levied, in accordance with the terms and conditions of the merger, to the end that the lands in the respective districts shall bear their fair and proportionate share of such indebtedness. [1969 ex.s. c 78 § 8. Formerly RCW 68.18.080.]

68.54.090 Merger—Transfer of all property, funds, assessments. The commissioners of the merging district shall, forthwith upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments theretofore levied. [1969 ex.s. c 78 § 9. Formerly RCW 68.18.090.]

68.54.100 Merger and transfer of part of one district to adjacent district—Petition—Election—Vote. A part of one district may be transferred and merged with an adjacent district whenever such area can be better served by the merged district. To effect such a merger a petition, signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district. Such petition shall be promoted by one or more qualified electors within the area to be transferred. If the commissioners of the merging district act favorably upon the petition, then the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district act favorably upon the petition, an election shall be called in the area merged.

In the event that either board of cemetery commissioners should not concur with the petition, the petition may then be presented to a county review board established for such purposes, if there be no county review board for such purposes then to the state review board and if there be no state review board, then to the county commissioners of the county in which the area to be merged is situated, who shall decide if the area can be better served by such a merger; upon an affirmative decision an election shall be called in the area merged.

A majority of the votes cast shall be necessary to approve the transfer. [1969 ex.s. c 78 § 10. Formerly RCW 68.18.100.]

68.54.110 Merger and transfer of part of one district to adjacent district—When election dispensed with. If three-fifths of all the qualified electors in the area to be merged sign a petition to merge the districts, no

election on the question of the merger is necessary, in which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the boards of the merging districts. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of transfer in the same manner and to the same effect as if the same had been authorized by an election. [1969 ex.s. c 78 § 11. Formerly RCW 68.18.110.]

68.54.120 Merger and transfer of part of one district to adjacent district—Preexisting indebtedness.

When a part of one cemetery district is transferred to another as provided by RCW 68.54.100 and 68.54.110, said part shall be relieved of all liability for any indebtedness of the district from which it is withdrawn. However, the acquiring district shall pay to the losing district that portion of the latter's indebtedness for which the transferred part was liable. This amount shall not exceed the proportion that the assessed valuation of the transferred part bears to the assessed valuation of the whole district from which said part is withdrawn. The adjustment of such indebtedness shall be based on the assessment for the year in which the transfer is made. The boards of commissioners of the districts involved in the said transfer and merger shall enter into a contract for the payment by the acquiring district of the above-referred to indebtedness under such terms as they deem proper, provided such contract shall not impair the security of existing creditors. [1987 c 331 § 75; 1969 ex.s. c 78 § 12. Formerly RCW 68.18.120.]

68.54.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.56

PENAL AND MISCELLANEOUS PROVISIONS

Sections

68.56.010	Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral.
68.56.020	Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage.
68.56.030	Unlawful damage to graves, markers, shrubs, etc.—Exceptions.
68.56.040	Nonconforming cemetery a nuisance—Penalty—Costs of prosecution.
68.56.050	Defendant liable for costs.
68.56.060	Police authority—Who may exercise.
68.56.070	Forfeiture of office for inattention to duty.
68.56.900	Effective date—1987 c 331.

Burial, removal permits required: RCW 70.58.230.

Care of veterans' plot at Olympia: RCW 73.24.020.

68.56.010 Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral. Every person is guilty of a gross misdemeanor who unlawfully or without right wilfully does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.

(2) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.

(3) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment. [1943 c 247 § 36; Rem. Supp. 1943 § 3778-36. Cf. 1909 c 249 § 240 and 1856-57 p 28 §§ 4, 5. Formerly RCW 68.48.010.]

68.56.020 Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage. Any person violating any provision of *RCW 68.48.010 is liable, in a civil action by and in the name of the cemetery authority, to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.020.]

**Reviser's note:* RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

68.56.030 Unlawful damage to graves, markers, shrubs, etc.—Exceptions. The provisions of *RCW 68.48.010 do not apply to the removal or unavoidable breakage or injury, by a cemetery authority, of any thing placed in or upon any portion of its cemetery in violation of any of the rules or regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority which has become in a wrecked, unsightly or dilapidated condition. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.030.]

**Reviser's note:* RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

68.56.040 Nonconforming cemetery a nuisance—Penalty—Costs of prosecution. Every person, firm or corporation who is the owner or operator of a cemetery established in violation of *this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. [1943 c 247 § 145; Rem. Supp. 1943 § 3778-145. Formerly RCW 68.48.040.]

**Reviser's note:* For "this act," see note following RCW 68.04.020. *Section applies to certain mausoleums, columbariums, etc.:* RCW 68.28.010.

68.56.050 Defendant liable for costs. Every person who violates any provision of *this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case. [1943 c 247 § 139; Rem. Supp. 1943 § 3778-139. Formerly RCW 68.48.060.]

**Reviser's note:* For "this act," see note following RCW 68.04.020. *Costs, etc., to be fixed by court having jurisdiction:* RCW 68.28.065.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.56.060 Police authority—Who may exercise. The sexton, superintendent or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property. [1943 c 247 § 55; Rem. Supp. 1943 § 3778-55. Formerly RCW 68.48.080.]

68.56.070 Forfeiture of office for inattention to duty. The office of any director or officer who acts or permits action contrary to *this act immediately thereupon becomes vacant. [1943 c 247 § 132; Rem. Supp. 1943 § 3778-132. Formerly RCW 68.48.090.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

68.56.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.60

ABANDONED AND HISTORIC CEMETERIES AND HISTORIC GRAVES

Sections

68.60.010	Definitions.
68.60.020	Dedication.
68.60.030	Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries.
68.60.040	Protection of cemeteries—Penalties.
68.60.050	Protection of historic graves—Penalty.
68.60.060	Violations—Civil liability.

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

(1) "Abandoned cemetery" means a burial ground of the human dead in [for] which the county assessor can find no record of an owner; or where the last known owner is deceased and lawful conveyance of the title has not been made; or in which a cemetery company, cemetery association, corporation, or other organization formed for the purposes of burying the human dead has either disbanded, been administratively dissolved by the secretary of state, or otherwise ceased to exist, and for which title has not been conveyed.

(2) "Historical cemetery" means any burial site or grounds which contain within them human remains buried prior to November 11, 1889; except that (a) cemeteries holding a valid certificate of authority to operate granted under RCW 68.05.115 and 68.05.215, (b) cemeteries owned or operated by any recognized religious denomination that qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built, and (c) cemeteries controlled or operated by a coroner, county, city,

town, or cemetery district shall not be considered historical cemeteries.

(3) "Historic grave" means a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and to chapter 68.24 RCW, prior to June 7, 1990, except Indian graves and burial cairns protected under chapter 27.44 RCW.

(4) "Cemetery" has the meaning provided in RCW 68.04.040(2). [1990 c 92 § 1.]

68.60.020 Dedication. Any cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.030 and 68.24.040 shall be considered permanently dedicated and subject to RCW 68.24.070. Removal of dedication may only be made pursuant to RCW 68.24.090 and 68.24.100. [1990 c 92 § 2.]

68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries. (1)(a) The archaeological and historical division of the department of community, trade, and economic development may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials, unless specifically granted by the cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the archaeological and historical division of the department of community, trade, and economic development shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds pursuant to chapter 68.44 RCW, and shall report in accordance with chapter 68.44 RCW to the state cemetery board.

(2) Except as provided in subsection (1) of this section, the department of community, trade, and economic development may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or

more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of community, trade, and economic development shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner. [1995 c 399 § 168; 1993 c 67 § 1; 1990 c 92 § 3.]

68.60.040 Protection of cemeteries—Penalties. (1) Every person who in a cemetery unlawfully or without right willfully destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the protection of a cemetery or any property in a cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) Every person who in a cemetery unlawfully or without right willfully destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, tree, shrub, flower, or plant within the limits of a cemetery is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(3) Every person who in a cemetery unlawfully or without right willfully opens a grave; removes personal effects of the decedent; removes all or portions of human remains; removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW. [1990 c 92 § 4.]

68.60.050 Protection of historic graves—Penalty. (1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the cemetery board. Expenses to reinter such human remains are to be provided by the office of archaeology and historic preservation.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported. [1989 c 44 § 5. Formerly RCW 68.05.420.]

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—Liberal construction—1989 c 44: See RCW 27.44.900 and 27.44.901.

68.60.060 Violations—Civil liability. Any person who violates any provision of this chapter is liable in a civil action by and in the name of the state cemetery board to pay all damages occasioned by their unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established. [1990 c 92 § 5.]

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

Chapters

- 69.04** Intrastate commerce in food, drugs, and cosmetics.
- 69.06** Food and beverage establishment workers' permits.
- 69.07** Washington food processing act.
- 69.10** Food storage warehouses.
- 69.25** Washington wholesome eggs and egg products act.
- 69.28** Honey.
- 69.30** Sanitary control of shellfish.
- 69.36** Washington caustic poison act of 1929.
- 69.38** Poisons—Sales and manufacturing.
- 69.40** Poisons and dangerous drugs.
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- 69.45** Drug samples.
- 69.50** Uniform controlled substances act.
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- 69.52** Imitation controlled substances.
- 69.53** Use of buildings for unlawful drugs.
- 69.60** Over-the-counter medications.
- 69.80** Food donation and distribution—Liability.
- 69.90** Kosher food products.

Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.

Board of pharmacy: Chapter 18.64 RCW.

Controlled atmosphere storage of fruits and vegetables: Chapter 15.30 RCW.

Food lockers: Chapter 19.32 RCW.

Hazardous substances (poison prevention): Chapter 70.106 RCW.

Horse meat: RCW 16.68.140.

Hotel and restaurant safety regulations: Chapter 70.62 RCW.

Inhaling toxic fumes: Chapter 9.47A RCW.

Milk and milk products for animal food: Chapter 15.37 RCW.

Poison information centers: Chapter 18.76 RCW.

Preparations, patent medicines containing alcohol: Chapter 66.12 RCW.

Regulation of sale of drugs and medicines authorized: State Constitution Art. 20 § 2.

Unlawful to refill trademarked containers: RCW 19.76.110.

Chapter 69.04

INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

(Formerly: Food, drug, and cosmetic act)

Sections

- 69.04.001 Statement of purpose.
- 69.04.002 Introductory.
- 69.04.003 "Federal act" defined.
- 69.04.004 "Intrastate commerce"
- 69.04.005 "Sale."
- 69.04.006 "Director."

- 69.04.007 "Person."
- 69.04.008 "Food."
- 69.04.009 "Drugs."
- 69.04.010 "Device."
- 69.04.011 "Cosmetic."
- 69.04.012 "Official compendium."
- 69.04.013 "Label"
- 69.04.014 "Immediate container."
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69.04.001 Statement of purpose. This chapter is intended to enact state legislation (1) which safeguards the public health and promotes the public welfare by protecting the consuming public from (a) potential injury by product use; (b) products that are adulterated; or (c) products that have been produced under unsanitary conditions, and the purchasing public from injury by merchandising deceit flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States. [1991 c 162 § 1; 1945 c 257 § 2; Rem. Supp. 1945 § 6163-51.]

Conformity with federal regulations: RCW 69.04.190 and 69.04.200

69.04.002 Introductory. For the purposes of this chapter, terms shall apply as herein defined unless the context clearly indicates otherwise. [1945 c 257 § 3; Rem. Supp. 1945 § 6163-52.]

69.04.003 "Federal act" defined. The term "federal act" means the federal food, drug, and cosmetic act, approved on June 25, 1938. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.) [1945 c 257 § 4; Rem. Supp. 1945 § 6163-53.]

69.04.004 "Intrastate commerce." The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1945 c 257 § 5; Rem. Supp. 1945 § 6163-54.]

69.04.005 "Sale." The term "sale" means any and every sale and includes (1) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up; (2) exposure, offer, or any other proffer; (3) holding, storing, or any other possessing; (4) dispensing, giving, delivering, serving, or any other supplying; and (5) applying, administering, or any other using. [1945 c 257 § 6; Rem. Supp. 1945 § 6163-55.]

69.04.006 "Director." The term "director" means the director of the department of agriculture of the state of Washington and his duly authorized representatives. [1945 c 257 § 7; Rem. Supp. 1945 § 6163-56.]

Director of agriculture, general duties: Chapter 43.23 RCW.

69.04.007 "Person." The term "person" includes individual, partnership, corporation, and association. [1945 c 257 § 8; Rem. Supp. 1945 § 6163-57.]

69.04.008 "Food." The term "food" means (1) articles used for food or drink for people or other animals, (2) bottled water, (3) chewing gum, and (4) articles used for components of any such article. [1992 c 34 § 2; 1945 c 257 § 9; Rem. Supp. 1945 § 6163-58.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.04.009 "Drugs." The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. [1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

69.04.010 "Device." The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis,

cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals. [1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

69.04.011 "Cosmetic." The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap. [1945 c 257 § 12; Rem. Supp. 1945 § 6163-61.]

69.04.012 "Official compendium." The term "official compendium" mean the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them. [1945 c 257 § 13; Rem. Supp. 1945 § 6163-62.]

69.04.013 "Label." The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper. [1945 c 257 § 14; Rem. Supp. 1945 § 6163-63.]

69.04.014 "Immediate container." The term "immediate container" does not include package liners. [1945 c 257 § 15; Rem. Supp. 1945 § 6163-64.]

69.04.015 "Labeling." The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1945 c 257 § 16; Rem. Supp. 1945 § 6163-65.]

Crimes relating to labeling: Chapter 9.16 RCW, RCW 69.40.055.

69.04.016 "Misleading labeling or advertisement," how determined. If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. [1945 c 257 § 17; Rem. Supp. 1945 § 6163-66.]

Crimes relating to advertising: Chapter 9.04 RCW.

69.04.017 "Antiseptic" as germicide. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. [1945 c 257 § 18; Rem. Supp. 1945 § 6163-67.]

69.04.018 "New drug" defined. The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: PROVIDED, That no drug in use on the *effective date of this chapter shall be regarded as a new drug. [1945 c 257 § 19; Rem. Supp. 1945 § 6163-68.]

*Effective date—1945 c 257: See RCW 69.04.860.

69.04.019 "Advertisement." The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. [1945 c 257 § 20; Rem. Supp. 1945 § 6163-69.]

69.04.020 "Contaminated with filth." The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [1945 c 257 § 21; Rem. Supp. 1945 § 6163-70.]

69.04.021 "Package." The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. [1963 c 198 § 8.]

69.04.022 "Pesticide chemical." The term "pesticide chemical" means any substance defined as an economic poison and/or agricultural pesticide in Title 15 RCW as now enacted or hereafter amended. [1963 c 198 § 9.]

69.04.023 "Raw agricultural commodity." The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing. [1963 c 198 § 10.]

69.04.024 "Food additive," "safe." (1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including

any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958; through either scientific procedures or experience based on common use in food) to be unsafe under the conditions of its intended use; except that such term does not include; (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of man or animal. [1963 c 198 § 11.]

69.04.025 "Color additive," "color." (1) The term "color additive" means a material which (a) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and (b) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which the director, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

(3) Nothing in subsection (1) hereof shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. [1963 c 198 § 12.]

69.04.040 Prohibited acts. The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of (a) any food in violation of RCW 69.04.350; or (b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(6) The refusal to permit (a) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by RCW 69.04.780; or (b) access

to or copying of any record as authorized by RCW 69.04.810.

(7) The refusal to permit entry or inspection as authorized by RCW 69.04.820.

(8) The removal, mutilation, or violation of an embargo notice as authorized by RCW 69.04.110.

(9) The giving of a guaranty or undertaking in intrastate commerce, referred to in RCW 69.04.080, that is false.

(10) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under RCW 69.04.350.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this chapter.

(12) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the federal act or under RCW 69.04.570, or that such drug complies with the provisions of either such section. [1945 c 257 § 22; Rem. Supp. 1945 § 6163-71. Prior: 1917 c 168 § 1; 1907 c 211 § 1; 1901 c 94 § 1.]

69.04.050 Remedy by injunction. (1) In addition to the remedies hereinafter provided the director is hereby authorized to apply to the superior court of Thurston county for, and such court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of RCW 69.04.040; without proof that an adequate remedy at law does not exist.

(2) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals (a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (b) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction. [1945 c 257 § 23; Rem. Supp. 1945 § 6163-72.]

Injunctions, generally: Chapter 7.40 RCW.

69.04.060 Criminal penalty for violations. Any person who violates any provision of RCW 69.04.040 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than two hundred dollars; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such

imprisonment and fine. [1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

69.04.070 Additional penalty. Notwithstanding the provisions of RCW 69.04.060, in case of a violation of any provision of RCW 69.04.040, with intent to defraud or mislead, the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine. [1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

69.04.080 Avoidance of penalty. No person shall be subject to the penalties of RCW 69.04.060:

(1) For having violated RCW 69.04.040(3), if he establishes that he received and sold such article in good faith, unless he refuses on request of the director to furnish the name and address of the person in the state of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated RCW 69.04.040 (1), (3), or (4), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such article in good faith, to the effect that such article complies with this chapter; or

(3) For having violated RCW 69.04.040(5), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this chapter; or

(4) For having violated RCW 69.04.040(9), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the state of Washington. [1945 c 257 § 26; Rem. Supp. 1945 § 6163-75.]

69.04.090 Liability of disseminator of advertisement. No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 69.04.060 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1945 c 257 § 27; Rem. Supp. 1945 § 6163-76.]

69.04.100 Condemnation of adulterated or misbranded article. Whenever the director shall find in intrastate commerce an article subject to this chapter which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the director is hereby authorized forthwith to destroy such article or to render it unsalable for human use. [1945 c 257 § 28; Rem. Supp. 1945 § 6163-77.]

69.04.110 Embargo of articles. Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public, due to its being adulterated or misbranded, or to otherwise protect the public from injury, or possible injury, he or she is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed. [1991 c 162 § 3; 1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

Purpose of section: See RCW 69.04.398.

69.04.120 Procedure on embargo. When the director has embargoed an article, he or she shall, forthwith and without delay and in no event later than thirty days after the affixing of notice of its embargo, petition the superior court for an order affirming the embargo. The court then has jurisdiction, for cause shown and after prompt hearing to any claimant of the embargoed article, to issue an order which directs the removal of the embargo or the destruction or the correction and release of the article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for a bond as the court finds indicated in the circumstances. [1991 c 162 § 4; 1983 c 95 § 8; 1945 c 257 § 30; Rem. Supp. 1945 § 6163-79.]

69.04.123 Exception to petition requirement under RCW 69.04.120. The director need not petition the superior court as provided for in RCW 69.04.120 if the owner or claimant of such food or food products agrees in writing to the disposition of such food or food products as the director may order. [1995 c 374 § 20.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.04.130 Petitions may be consolidated. Two or more petitions under RCW 69.04.120, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1945 c 257 § 31; Rem. Supp. 1945 § 6163-80.]

69.04.140 Claimant entitled to sample. The claimant in any proceeding by petition under RCW 69.04.120 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1945 c 257 § 32; Rem. Supp. 1945 § 6163-81.]

69.04.150 Damages not recoverable if probable cause existed. No state court shall allow the recovery of damages from administrative action for condemnation under RCW 69.04.100 or for embargo under RCW 69.04.110, if the court finds that there was probable cause for such action. [1945 c 257 § 33; Rem. Supp. 1945 § 6163-82.]

69.04.160 Prosecutions. (1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter, or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of this chapter is reported by the director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the director, either orally or in writing, with regard to such contemplated proceeding. [1945 c 257 § 34; Rem. Supp. 1945 § 6163-83.]

69.04.170 Minor infractions. Nothing in this chapter shall be construed as requiring the director to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [1945 c 257 § 35; Rem. Supp. 1945 § 6163-84.]

69.04.180 Proceedings to be in name of state. All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the state of Washington. [1945 c 257 § 36; Rem. Supp. 1945 § 6163-85.]

69.04.190 Standards may be prescribed by regulations. Whenever in the judgment of the director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. [1945 c 257 § 37; Rem. Supp. 1945 § 6163-86. Prior: 1917 c 168 § 2.]

69.04.200 Conformance with federal standards. The definitions and standards of identity, the standards of quality and fill of container, and the label requirements

prescribed by regulations promulgated under *this section shall conform, insofar as practicable, with those prescribed by regulations promulgated under section 401 of the federal act and to the definitions and standards promulgated under the meat inspection act approved March 4, 1907, as amended. [1945 c 257 § 38; Rem. Supp. 1945 § 6163-87.]

*Reviser's note: The language "this section" appears in 1945 c 257 § 38 but apparently refers to 1945 c 257 § 37 codified as RCW 69.04.190.

69.04.205 Bacon—Packaging at retail to reveal quality and leanness. All packaged bacon other than that packaged in cans shall be offered and exposed for sale and sold, within the state of Washington only at retail in packages which permit the buyer to readily view the quality and degree of leanness of the product. [1971 c 49 § 1.]

69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal. The director of the department of agriculture is hereby authorized to promulgate rules, regulations, and standards for the implementation of RCW 69.04.205 through 69.04.207. If the director has reason to believe that any packaging method, package, or container in use or proposed for use with respect to the marketing of bacon is false or misleading in any particular, or does not meet the requirements of RCW 69.04.205, he may direct that such use be withheld unless the packaging method, package, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the packaging method, package, or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the packaging method, package, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to a court of proper jurisdiction. [1971 c 49 § 2.]

69.04.207 Bacon—Effective date. RCW 69.04.205 through 69.04.207 shall take effect on January 1, 1972. [1971 c 49 § 3.]

69.04.210 Food—Adulteration by poisonous or deleterious substance. A food shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2)(a) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive, or (iii) a color additive) which is unsafe within the meaning of RCW 69.04.390, or (b) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of RCW

69.04.392, or (c) if it is, or it bears or contains, any food additive which is unsafe within the meaning of RCW 69.04.394: **PROVIDED**, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under RCW 69.04.392 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of RCW 69.04.390 and 69.04.394, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(3) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or

(6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394. [1963 c 198 § 1; 1945 c 257 § 39; Rem. Supp. 1945 § 6163-88. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.220 Food—Adulteration by abstraction, addition, substitution, etc. A food shall be deemed to be adulterated (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1945 c 257 § 40; Rem. Supp. 1945 § 6163-89.]

69.04.231 Food—Adulteration by color additive. A food shall be deemed to be adulterated if it is, or it bears or contains a color additive which is unsafe within the meaning of RCW 69.04.396. [1963 c 198 § 5.]

69.04.240 Confectionery—Adulteration. A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol from natural or artificial alcohol flavoring in excess of one percent of the weight of the confection or any nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural

gum, and pectin: PROVIDED, That this section shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances. [1984 c 78 § 2; 1945 c 257 § 42; Rem. Supp. 1945 § 6163-91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

69.04.245 Poultry—Improper use of state's geographic outline. Uncooked poultry is deemed to be misbranded if it is produced outside of this state but the label for the poultry contains the geographic outline of this state. [1989 c 257 § 2.]

Legislative findings—1989 c 257: "The legislature finds that: Poultry produced in this state is known throughout the state for its high quality; and one of the sources of that quality is the proximity of production centers to retail outlets in the state. The legislature also finds that labeling which misrepresents poultry produced elsewhere as being a product of this state may lead consumers to purchase products which they would not otherwise purchase. The legislature further finds that the presence of the geographic outline of this state on a label for poultry produced outside of the state misrepresents the product as having been produced in this state." [1989 c 257 § 1.]

69.04.250 Food—Misbranding by false label, etc. A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if it is offered for sale under the name of another food; or (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (4) if its container is so made, formed or filled as to be misleading. [1945 c 257 § 43; Rem. Supp. 1945 § 6163-92. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.260 Packaged food—Misbranding. If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 44; Rem. Supp. 1945 § 6163-93.]

69.04.270 Food—Misbranding by lack of prominent label. A food shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 45; Rem. Supp. 1945 § 6163-94.]

69.04.280 Food—Misbranding for nonconformity with standard of identity. If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by RCW 69.04.190, it shall be deemed to be misbranded unless

(1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food. [1945 c 257 § 46; Rem. Supp. 1945 § 6163-95.]

69.04.290 Food—Misbranding for nonconformity with standard of quality. If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by RCW 69.04.190, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 47; Rem. Supp. 1945 § 6163-96.]

69.04.300 Food—Misbranding for nonconformity with standard of fill. If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by RCW 69.04.190, and it falls below the standard of fill of container applicable thereto, it shall be deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 48; Rem. Supp. 1945 § 6163-97.]

69.04.310 Food—Misbranding by failure to show usual name and ingredients. If a food is not subject to the provisions of RCW 69.04.280, it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: PROVIDED, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 49; Rem. Supp. 1945 § 6163-98.]

69.04.315 Halibut—Misbranding by failure to show proper name. No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words unless such food fish product is Hippoglossus Hippoglossus or Hippoglossus Stenolepsis. Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter. [1967 ex.s. c 79 § 1.]

69.04.320 Food—Misbranding by failure to show dietary properties. If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the director, such regulations to conform insofar as practicable

with regulations under section 403(j) of the federal act. [1945 c 257 § 50; Rem. Supp. 1945 § 6163-99.]

69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc. If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: PROVIDED, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the director. The provisions of this section and of RCW 69.04.280 and 69.04.310, with respect to artificial coloring, shall not apply in the case of butter, cheese, or ice cream. [1945 c 257 § 51; Rem. Supp. 1945 § 6163-100.]

69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed. (1) If a theater or other commercial food service establishment prepares and sells popcorn for human consumption, the establishment, at the point of sale, shall disclose by posting a sign in a conspicuous manner to prospective consumers a statement as to whether the butter or butter-like flavoring added to or attributed to the popcorn offered for sale is butter as defined in *RCW 15.32.010 or is some other product. If the flavoring is some other product, the establishment shall also disclose the ingredients of the product.

The director of agriculture shall adopt rules prescribing the size and content of the sign upon which the disclosure is to be made. Any popcorn sold by or offered for sale by such an establishment to a consumer in violation of this section or the rules of the director implementing this section shall be deemed to be misbranded for the purposes of this chapter.

(2) The provisions of subsection (1) of this section do not apply to packaged popcorn labeled so as to disclose ingredients as required by law for prepackaged foods. [1986 c 203 § 17.]

***Reviser's note:** RCW 15.32.010 was recodified as RCW 15.36.012 pursuant to 1994 c 143 § 514.

Severability—1986 c 203: See note following RCW 15.17.245.

69.04.333 Poultry and poultry products—Label to indicate if product frozen. It shall be unlawful for any person to sell at retail or display for sale at retail any poultry and poultry products, including turkey, which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such poultry or poultry product shall be sold unless in such a package or container bearing said label. [1969 ex.s. c 194 § 1.]

Washington wholesome poultry products act: Chapter 16.74 RCW.

69.04.334 Turkeys—Label requirement as to grading. No person shall advertise for sale, sell, offer for sale or hold for sale in intrastate commerce any turkey that does not bear a label. Such label shall be properly displayed on the package if such turkey is prepackaged, or attached to

the turkey if not prepackaged. Such label shall, if the turkey has been graded, state the name of the governmental agency, whether federal or state, and the grade. No turkey which has been graded may be labeled as being ungraded. Any advertisement in any media concerning the sale of turkeys shall state or set forth whether a turkey is ungraded or graded and the specific grade if graded. [1969 ex.s. c 194 § 2.]

69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter. The provisions of this chapter shall be applicable to the enforcement of RCW 69.04.333 and 69.04.334 and any person violating the provisions of RCW 69.04.333 and 69.04.334 shall be subject to the applicable civil and criminal penalties for such violations as provided for in this chapter. [1969 ex.s. c 194 § 3.]

69.04.340 Natural vitamin, mineral, or dietary properties need not be shown. Nothing in this chapter shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food. [1945 c 257 § 52; Rem. Supp. 1945 § 6163-101.]

69.04.350 Permits to manufacture or process certain foods. Whenever the director finds after investigation that the distribution in intrastate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section 404(a) of the federal act. [1945 c 257 § 53; Rem. Supp. 1945 § 6163-102.]

69.04.360 Suspension of permit. The director is authorized to suspend immediately upon notice any permit issued under authority of *this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to

comply with and maintain the conditions of the permit, as originally issued or as amended. [1945 c 257 § 54; Rem. Supp. 1945 § 6163-103.]

***Reviser's note:** The language "this section" appears in 1945 c 257 § 54 but apparently refers to 1945 c 257 § 53 codified as RCW 69.04.350.

69.04.370 Right of access for inspection. Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. [1945 c 257 § 55; Rem. Supp. 1945 § 6163-104.]

69.04.380 Food exempt if in transit for completion purposes. Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 56; Rem. Supp. 1945 § 6163-105.]

69.04.390 Regulations permitting tolerance of harmful matter. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210; but when such substance is so required or cannot be so avoided, the director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210. In determining the quantity of such added substance to be tolerated in or on different articles of food, the director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. [1963 c 198 § 2; 1945 c 257 § 57; Rem. Supp. 1945 § 6163-106.]

69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities. (1) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which generally is recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as unsafe for use, added to a raw agricultural

commodity, shall be deemed unsafe for the purpose of the application of clause (2) of RCW 69.04.210 unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed pursuant to subsection (2) hereof and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance pursuant to subsection (2) hereof.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 408 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, setting forth the tolerances for pesticide chemicals in or on any raw agricultural commodity, are hereby adopted as the regulations for tolerances applicable to this chapter: **PROVIDED,** That the director is hereby authorized to adopt by regulation any new or future amendments to such federal regulations for tolerances, including exemption from tolerance and zero tolerances, to the extent necessary to protect the public health. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein tolerances for pesticides, exemptions, and zero tolerances, upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such regulation.

(3) In adopting any new or amended tolerances by regulation issued pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the necessity for the production of an adequate, wholesome, and economical food supply; (c) the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (d) the opinion of experts qualified by scientific training and experience to determine the proper tolerance to be allowed for any pesticide chemical. [1975 1st ex.s. c 7 § 26; 1963 c 198 § 3.]

Purpose of section: See RCW 69.04.398.

69.04.394 Regulations permitting tolerance of harmful matter—Food additives. (1) A food additive shall, with respect to any particular use or intended use of

such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (d) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data. [1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

Purpose of section: See RCW 69.04.398

69.04.396 Regulations permitting tolerance of harmful matter—Color additives. (1) A color additive

shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect, if any, of such additive in the diet of man or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet; (d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data; (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of (i) the pure dye and all intermediates and other impurities contained in such color additives, (ii) such additive in or on any article of food, and (iii) any substance formed in or on such article because of

the use of such additive; and (f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe for use as a color additive. [1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

Purpose of section: See RCW 69.04.398.

Food—Adulteration by color additive: RCW 69.04.231.

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules. (1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and rules with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in accord with chapter 34.05 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal food, drug and cosmetic act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.05 RCW as enacted or hereafter amended.

(2) The provisions of subsection (1) of this section do not apply to rules adopted by the director as necessary to permit the production of kosher food products as defined in RCW 69.90.010.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the director may adopt rules necessary to carry out the provisions of this chapter. [1991 c 162 § 5; 1986 c 203 § 18; 1975 1st ex.s. c 7 § 36.]

Severability—1986 c 203: See note following RCW 15.17.245.

69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398. See RCW 15.36.471.

69.04.400 Conformance with federal regulations. The regulations promulgated under RCW 69.04.390 shall conform, insofar as practicable, with those promulgated under section 406 of the federal act. [1963 c 198 § 7; 1945 c 257 § 58; Rem. Supp. 1945 § 6163-107.]

69.04.410 Drugs—Adulteration by harmful substances. A drug or device shall be deemed to be adulterated (1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or

whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the federal act. [1945 c 257 § 59; Rem. Supp. 1945 § 6163-108. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.420 Drugs—Adulteration for failure to comply with compendium standard. If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501(b) of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia. [1945 c 257 § 60; Rem. Supp. 1945 § 6163-109.]

69.04.430 Drugs—Adulteration for lack of represented purity or quality. If a drug or device is not subject to the provisions of RCW 69.04.420 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess, it shall be deemed to be adulterated. [1945 c 257 § 61; Rem. Supp. 1945 § 6163-110.]

69.04.440 Drugs—Adulteration by admixture or substitution of ingredients. A drug shall be deemed to be adulterated if any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor. [1945 c 257 § 62; Rem. Supp. 1945 § 6163-111.]

69.04.450 Drugs—Misbranding by false labeling. A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular. [1945 c 257 § 63; Rem. Supp. 1945 § 6163-112. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.460 Packaged drugs—Misbranding. If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or

distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 64; Rem. Supp. 1945 § 6163-113. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.470 Drugs—Misbranding by lack of prominent label. A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 65; Rem. Supp. 1945 § 6163-114. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug. A drug or device shall be deemed to be misbranded if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaïne, barbituric acid, beta eucaïne, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." [1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.490 Drugs—Misbranding by failure to show usual name and ingredients. If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: PROVIDED, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 67; Rem. Supp. 1945 § 6163-116. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.500 Drugs—Misbranding by failure to give directions for use and warnings. A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children

where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: PROVIDED, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable hereunder. [1945 c 257 § 68; Rem. Supp. 1945 § 6163-117. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.510 Drugs—Misbranding for improper packaging and labeling. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: PROVIDED, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. [1945 c 257 § 69; Rem. Supp. 1945 § 6163-118. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.520 Drugs—Misbranding for failure to show possibility of deterioration. If a drug or device has been found by the secretary of agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502(h) of the federal act for the protection of the public health. [1945 c 257 § 70; Rem. Supp. 1945 § 6163-119. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.530 Drugs—Misbranding by misleading representation. A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof. [1945 c 257 § 71; Rem. Supp. 1945 § 6163-120. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it. A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription

signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug. [1945 c 257 § 72; Rem. Supp. 1945 § 6163-121. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.550 Drugs exempt if in transit for completion purposes. A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling and packaging requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 73; Rem. Supp. 1945 § 6163-122.]

69.04.560 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of RCW 69.04.450 through 69.04.540. [1945 c 257 § 74; Rem. Supp. 1945 § 6163-123.]

69.04.565 DMSO (dimethyl sulfoxide) authorized. Notwithstanding any other provision of state law, DMSO (dimethyl sulfoxide) may be introduced into intrastate commerce as long as (1) it is manufactured or distributed by persons licensed pursuant to chapter 18.64 RCW or chapter 18.92 RCW, and (2) it is used, or intended to be used, in the treatment of human beings or animals for any ailment or adverse condition: PROVIDED, That DMSO intended for topical application, consistent with rules governing purity and labeling promulgated by the state board of pharmacy, shall not be considered a legend drug and may be sold by any retailer. [1981 c 50 § 1.]

DMSO use by health facilities, physicians: RCW 70.54.190.

69.04.570 Introduction of new drug. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has been filed under this section of this chapter with respect to such drug: PROVIDED, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal

act: PROVIDED FURTHER, That if the director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly. [1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

69.04.580 Application for introduction. An application under RCW 69.04.570 shall be filed with the director, and subject to any waiver by the director, shall include (1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the director may require; and (6) specimens of the labeling proposed to be used for such drug. [1945 c 257 § 76; Rem. Supp. 1945 § 6163-125.]

69.04.590 Effective date of application. An application filed under RCW 69.04.570 shall become effective on the sixtieth day after the filing thereof, unless the director (1) makes such application effective prior to such day; or (2) issues an order with respect to such application pursuant to RCW 69.04.600. [1945 c 257 § 77; Rem. Supp. 1945 § 6163-126.]

69.04.600 Denial of application. If the director finds, upon the basis of the information before him and after due notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based. [1945 c 257 § 78; Rem. Supp. 1945 § 6163-127.]

69.04.610 Revocation of denial. An order refusing to permit an application under RCW 69.04.570 to become effective may be suspended or revoked by the director, for cause and by order stating the findings upon which it is based. [1945 c 257 § 79; Rem. Supp. 1945 § 6163-128.]

69.04.620 Service of order of denial. Orders of the director issued under RCW 69.04.600 shall be served (1) in person by a duly authorized representative of the director or (2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the director. [1945 c 257 § 80; Rem. Supp. 1945 § 6163-129.]

69.04.630 Drug for investigational use exempt. A drug shall be exempt from the operation of RCW 69.04.570 which is intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly

labeled "For investigational use only." [1945 c 257 § 81; Rem. Supp. 1945 § 6163-130.]

69.04.640 Court review of denial. The superior court of Thurston county shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.600, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties. [1945 c 257 § 82; Rem. Supp. 1945 § 6163-131.]

69.04.650 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the operation of RCW 69.04.570 through 69.04.640. [1945 c 257 § 83; Rem. Supp. 1945 § 6163-132.]

69.04.660 Federally licensed drugs exempt. The provisions of RCW 69.04.570 shall not apply to any drug which is licensed under the federal virus, serum, and toxin act of July 1, 1902; or under the federal virus, serums, toxins, antitoxins, and analogous products act of March 4, 1913. [1945 c 257 § 84; Rem. Supp. 1945 § 6163-133.]

69.04.670 Cosmetics—Adulteration by injurious substances. A cosmetic shall be deemed to be adulterated (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: PROVIDED, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or (2) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (3) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (4) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (5) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the federal act. [1945 c 257 § 85; Rem. Supp. 1945 § 6163-134.]

69.04.680 Cosmetics—Misbranding by false label, etc. A cosmetic shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if in package form, unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (b) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director. [1945 c 257 § 86; Rem. Supp. 1945 § 6163-135.]

69.04.690 Cosmetics—Misbranding by lack of prominent label. A cosmetic shall be deemed to be misbranded (1) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (2) if its container is so made, formed, or filled as to be misleading. [1945 c 257 § 87; Rem. Supp. 1945 § 6163-136.]

69.04.700 Cosmetics exempt if in transit for completion purposes. A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 88; Rem. Supp. 1945 § 6163-137.]

69.04.710 Advertisement, when deemed false. An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular. [1945 c 257 § 89; Rem. Supp. 1945 § 6163-138.]

69.04.720 Advertising of cure of certain diseases deemed false. The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, *venereal disease, shall also be deemed to be false; except that no advertisement not in violation of RCW 69.04.710 shall be deemed to be false under this section if it is disseminated only to members of the medical, veterinary, dental, pharmaceutical, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of

public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: PROVIDED, That whenever the director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director may deem necessary in the interest of public health: PROVIDED FURTHER, That this section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. [1945 c 257 § 90; Rem. Supp. 1945 § 6163-139.]

***Reviser's note:** The term "venereal disease" was changed to "sexually transmitted disease" by 1988 c 206.

69.04.730 Enforcement, where vested—Regulations.

The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: PROVIDED, HOWEVER, That the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163-139a.]

69.04.740 Regulations to conform with federal regulations. The purpose of this chapter being to promote uniformity of state legislation with the federal act, the director is hereby authorized (1) to adopt, insofar as applicable, the regulations from time to time promulgated under the federal act; and (2) to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated under the federal act. [1945 c 257 § 92; Rem. Supp. 1945 § 6163-140.]

69.04.750 Hearings. Hearings authorized or required by this chapter shall be conducted by the director or his duly authorized representative designated for the purpose. [1945 c 257 § 93; Rem. Supp. 1945 § 6163-141.]

69.04.761 Hearing on proposed regulation—Procedure. The director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this chapter. The procedure to be followed concerning such hearings shall comply in all respects with chapter 34.05 RCW (Administrative Procedure Act) as now enacted or hereafter amended. [1963 c 198 § 13.]

69.04.770 Review on petition prior to effective date. The director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under *RCW 69.04.760, promulgating a new or amended regulation under this chapter, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order. [1945 c 257 § 95; Rem. Supp. 1945 § 6163-143.]

***Reviser's note:** RCW 69.04.760 was repealed by 1963 c 198 § 15. Later enactment, sec RCW 69.04.761.

69.04.780 Investigations—Samples—Right of entry—Verified statements. The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right (1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination.

The director and the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. Such department personnel are empowered to administer oaths of verification on the statements. [1991 c 162 § 6; 1945 c 257 § 96; Rem. Supp. 1945 § 6163-144.]

69.04.790 Owner may obtain part of sample.

Where a sample or specimen of any such article is taken for examination under this chapter the director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the director is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this chapter. [1945 c 257 § 97; Rem. Supp. 1945 § 6163-145.]

69.04.800 Access to records of other agencies. For the purpose of enforcing the provisions of this chapter, pertinent records of any administrative agency of the state government shall be open to inspection by the director. [1945 c 257 § 98; Rem. Supp. 1945 § 6163-146.]

69.04.810 Access to records of intrastate carriers. For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: PROVIDED, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: PROVIDED FURTHER, That except for violations of RCW 69.04.955, penalties levied under RCW 69.04.980, the requirements of RCW 69.04.950 through 69.04.980, and the requirements of this section, carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business

as carriers. [1990 c 202 § 9; 1945 c 257 § 99; Rem. Supp. 1945 § 6163-147.]

69.04.820 Right of entry to factories, warehouses, vehicles, etc. For the purpose of enforcing the provisions of this chapter, the director is authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this chapter, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein. [1945 c 257 § 100; Rem. Supp. 1945 § 6163-148.]

69.04.830 Publication of reports of judgments, orders and decrees. The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof. [1945 c 257 § 101; Rem. Supp. 1945 § 6163-149.]

69.04.840 Dissemination of information. The director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the director, imminent danger to health or gross deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of his examinations and investigations under this chapter. [1945 c 257 § 102; Rem. Supp. 1945 § 6163-150.]

69.04.845 Severability—1945 c 257. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1945 c 257 § 103; Rem. Supp. 1945 § 6163-151.]

69.04.850 Construction—1945 c 257. This chapter and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics. [1945 c 257 § 104; Rem. Supp. 1945 § 6163-152.]

69.04.860 Effective date of chapter—1945 c 257. This chapter shall take effect ninety days after the date of its enactment, and all state laws or parts of laws in conflict with this chapter are then repealed: PROVIDED, That the provisions of section 91 shall become effective on the enactment of this chapter, and thereafter the director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after the effective date of this chapter as the director shall direct: PROVIDED FURTHER, That all other provisions of this chapter to the extent that they may relate to the enforcement of such

sections, shall take effect on the date of the enactment of this chapter. [1945 c 257 § 105; Rem. Supp. 1945 § 6163-153.]

Reviser's note: 1945 c 257 § 91 referred to herein was vetoed by the governor but was subsequently reenacted as 1947 c 25 notwithstanding the veto. Section 91 is codified as RCW 69.04.730. For effective date of section 91 see preface 1947 session laws.

69.04.870 Short title. This chapter may be cited as the Uniform Washington Food, Drug, and Cosmetic Act. [1945 c 257 § 1; Rem. Supp. 1945 § 6163-50.]

69.04.880 Civil penalty. Whenever the director finds that a person has committed a violation of a provision of this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each and every such violation shall be a separate and distinct offense. Imposition of the civil penalty shall be subject to a hearing in conformance with chapter 34.05 RCW. [1991 c 162 § 2.]

69.04.900 Perishable packaged food—Pull date labeling—Definitions. For the purpose of RCW 69.04.900 through 69.04.920:

(1) "Perishable packaged food goods" means and includes all foods and beverages, except alcoholic beverages, frozen foods, fresh meat, poultry and fish and a raw agricultural commodity as defined in this chapter, intended for human consumption which are canned, bottled, or packaged other than at the time and point of retail sale, which have a high risk of spoilage within a period of thirty days, and as determined by the director of the department of agriculture by rule and regulation to be perishable.

(2) "Pull date" means the latest date a packaged food product shall be offered for sale to the public.

(3) "Shelf life" means the length of time during which a packaged food product will retain its safe consumption quality if stored under proper temperature conditions.

(4) "Fish" as used in subsection (1) of this section shall mean any water breathing animals, including, but not limited to, shellfish such as lobster, clams, crab, or other mollusca which are prepared, processed, sold, or intended or offered for sale. [1974 ex.s. c 57 § 1; 1973 1st ex.s. c 112 § 1.]

69.04.905 Perishable packaged food—Pull date labeling—Required. All perishable packaged food goods with a projected shelf life of thirty days or less, which are offered for sale to the public after January 1, 1974 shall state on the package the pull date. The pull date must be stated in day, and month and be in a style and format that is readily decipherable by consumers: PROVIDED, That the director of the department of agriculture may exclude the monthly requirement on the pull date for perishable packaged food goods which have a shelf life of seven days or less. No perishable packaged food goods shall be offered for sale after the pull date, except as provided in RCW 69.04.910. [1974 ex.s. c 57 § 2; 1973 1st ex.s. c 112 § 2.]

69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception.

No person shall sell, trade or barter any perishable packaged food goods beyond the pull date appearing thereon, nor shall any person rewrap or repackage any packaged perishable food goods with the intention of placing a pull date thereon which is different from the original: PROVIDED, HOWEVER, That those packaged perishable food goods whose pull dates have expired may be sold if they are still wholesome and are without danger to health, and are clearly identified as having passed the pull date. [1973 1st ex.s. c 112 § 3.]

69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations. The director of the department of agriculture shall by rule and regulation establish uniform standards for pull date labeling, and optimum storage conditions of perishable packaged food goods. In addition to his other duties the director, in consultation with the secretary of the department of health where appropriate, may promulgate such other rules and regulations as may be necessary to carry out the purposes of RCW 69.04.900 through 69.04.920. [1989 1st ex.s. c 9 § 225; 1973 1st ex.s. c 112 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.04.920 Perishable packaged food—Pull date labeling—Penalties. Any person convicted of a violation of RCW 69.04.905 or 69.04.910 shall be punishable by a fine not to exceed five hundred dollars. [1973 1st ex.s. c 112 § 5.]

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions. It shall be unlawful for any person to sell at retail or display for sale at retail any food fish or shellfish as defined in RCW 75.08.011, any meat capable of use as human food as defined in RCW 16.49A.150 as now or hereafter amended, or any meat food product as defined in RCW 16.49A.130 as now or hereafter amended which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: PROVIDED, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization. [1988 c 254 § 8; 1983 1st ex.s. c 46 § 179; 1975 c 39 § 1.]

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

69.04.932 Salmon labeling—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 69.04.933 through 69.04.935.

(1) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

SCIENTIFIC NAME	COMMON NAME
<i>Oncorhynchus tshawytscha</i>	Chinook salmon or king salmon
<i>Oncorhynchus kisutch</i>	Coho salmon or silver salmon
<i>Oncorhynchus keta</i>	Chum salmon

<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon
<i>Salmo salar</i> (in other than its landlocked form)	Atlantic salmon

(2) "Commercially caught" means salmon harvested by commercial fishers. [1993 c 282 § 2.]

Finding—1993 c 282: "The legislature finds that salmon consumers in Washington benefit from knowing the species and origin of the salmon they purchase. The accurate identification of such species, as well as knowledge of the country or state of origin and of whether they were caught commercially or were farm-raised, is important to consumers." [1993 c 282 § 1.]

69.04.933 Salmon labeling—Identification of species—Exceptions—Penalty. With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen salmon food fish or cultured aquatic salmon without identifying the species of salmon by its common name to the buyer at the point of sale such that the buyer can make an informed decision in purchasing. A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about the species of salmon and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [1993 c 282 § 3.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty. With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:

(1) Private sector cultured aquatic salmon without identifying the product as farm-raised salmon; or

(2) Commercially caught salmon designated as food fish under Title 75 RCW without identifying the product as commercially caught salmon.

Identification of the products under subsections (1) and (2) of this section shall be made to the buyer at the point of sale such that the buyer can make an informed decision in purchasing.

A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [1993 c 282 § 4.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.935 Salmon labeling—Rules for identification and enforcement. To promote honesty and fair dealing for consumers, the director, in consultation with the director of the department of fish and wildlife, shall adopt rules:

(1) Fixing and establishing a reasonable definition and standard of identity for salmon for purposes of identifying and selling salmon;

(2) Enforcing RCW 69.04.933 and 69.04.934. [1994 c 264 § 39; 1993 c 282 § 5.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.940 Imported lamb products—Labeling requirements. All retail sales of fresh or frozen lamb products which are imported from another country shall be labelled with the country of origin. For the purposes of this section "imported lamb products" shall include but not be limited to, live lambs imported from another country but slaughtered in the United States. [1987 c 393 § 25.]

69.04.950 Transport of bulk foods—Definitions. The definitions in this section apply throughout RCW 69.04.950 through 69.04.980:

(1) "Food" means: (a) Any article used for food or drink for humans or used as a component of such an article; or (b) a food grade substance.

(2) "Food grade substance" means a substance which satisfies the requirements of the federal food, drug, and cosmetic act, meat inspection act, and poultry products act and rules promulgated thereunder as materials approved by the federal food and drug administration, United States department of agriculture, or United States environmental protection agency for use: (a) As an additive in food or drink for human consumption, (b) in sanitizing food or drink for human consumption, (c) in processing food or drink for human consumption, or (d) in maintaining equipment with food contact surfaces during which maintenance the substance is expected to come in contact with food or drink for human consumption.

(3) "In bulk form" means a food or substance which is not packaged or contained by anything other than the cargo carrying portion of the vehicle or vessel.

(4) "Vehicle or vessel" means a commercial vehicle or commercial vessel which has a gross weight of more than ten thousand pounds, is used to transport property, and is a motor vehicle, motor truck, trailer, railroad car, or vessel. [1990 c 202 § 1.]

Advisory committee—Report—1990 c 202: "The director of agriculture and the secretary of health shall examine, in consultation with an industry advisory committee, the potential hazards that may be posed to the public health by the transportation of food in other than bulk form in intrastate commerce. The director and secretary shall report the findings to the legislature by January 1, 1992, concerning the extent of the potential hazards, the frequency of mixed shipments of packaged food and nonfood items, the manner in which mixed shipments of packaged food and nonfood items are transported, and the incidents of food contamination in Washington state within the past five years. The findings shall include recommendations, if any, for regulating the transportation of food in other than bulk form.

The director and the secretary shall establish an industry advisory committee to provide advice regarding the examination required by this section. The director and the secretary shall jointly appoint not less than nine persons to the committee. These persons shall be representatives from the manufacturing, processing, wholesaling, distributing, and retailing sectors of the food industry." [1990 c 202 § 8.]

69.04.955 Transport of bulk foods—Prohibitions—Exemption. (1) Except as provided in RCW 69.04.965 and 69.04.975, no person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel that has been used for transporting in bulk form a cargo other than food.

(2) No person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle

or vessel unless the vehicle or vessel is marked "Food or Food Compatible Only" in conformance with rules adopted under RCW 69.04.960.

(3) No person may transport in intrastate commerce a substance in bulk form other than food or a substance on a list adopted under RCW 69.04.960 in the cargo carrying portion of a vehicle or vessel marked "Food or Food Compatible Only."

(4) This section does not apply to the transportation of a raw agricultural commodity from the point of its production to the facility at which the commodity is first processed or packaged. [1990 c 202 § 2.]

69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking. (1) The director of agriculture and the secretary of health shall jointly adopt by rule:

(a) A list of food compatible substances other than food that may be transported in bulk form as cargo in a vehicle or vessel that is also used, on separate occasions, to transport food in bulk form as cargo. The list shall contain those substances that the director and the secretary determine will not pose a health hazard if food in bulk form were transported in the vehicle or vessel after it transported the substance. In making this determination, the director and the secretary shall assume that some residual portion of the substance will remain in the cargo carrying portion of the vehicle or vessel when the food is transported;

(b) The procedures to be used to clean the vehicle or vessel after transporting the substance and prior to transporting the food;

(c) The form of the certificates to be used under RCW 69.04.965; and

(d) Requirements for the "Food or Food Compatible Only" marking which must be borne by a vehicle or vessel under RCW 69.04.955 or 69.04.965.

(2) In developing and adopting rules under this section and RCW 69.04.970, the director and the secretary shall consult with the secretary of transportation, the chief of the state patrol, the chair of the utilities and transportation commission, and representatives of the vehicle and vessel transportation industries, food processors, and agricultural commodity organizations. [1990 c 202 § 3.]

69.04.965 Transport of bulk foods—Transports not constituting violations. Transporting food as cargo in bulk form in intrastate commerce in a vehicle or vessel that has previously been used to transport in bulk form a cargo other than food does not constitute a violation of RCW 69.04.955 if:

(1) The cargo is a food compatible substance contained on the list adopted by the director and secretary under RCW 69.04.960;

(2) The vehicle or vessel has been cleaned as required by the rules adopted under RCW 69.04.960;

(3) The vehicle or vessel is marked "Food or Food Compatible" in conformance with rules adopted under RCW 69.04.960; and

(4) A certificate accompanies the vehicle or vessel when the food is transported by other than railroad car which attests, under penalty of perjury, to the fact that the vehicle

or vessel has been cleaned as required by those rules and is dated and signed by the party responsible for that cleaning. Such certificates shall be maintained by the owner of the vehicle or vessel for not less than three years and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. The director of agriculture and the secretary of health shall jointly adopt rules requiring such certificates for the transportation of food under this section by railroad car and requiring such certificates to be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture. [1990 c 202 § 4.]

69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels. The director of agriculture and the secretary of health shall jointly adopt by rule:

(1) A list of substances which, if transported in bulk form in the cargo carrying portion of a vehicle or vessel, render the vehicle or vessel permanently unsuitable for use in transporting food in bulk form because the prospect that any residue might be present in the vehicle or vessel when it transports food poses a hazard to the public health; and

(2) Procedures to be used to rehabilitate a vehicle or vessel that has been used to transport a substance other than a substance contained on a list adopted under RCW 69.04.960 or under subsection (1) of this section. The procedures shall ensure that transporting food in the cargo carrying portion of the vehicle or vessel after its rehabilitation will not pose a health hazard. [1990 c 202 § 5.]

69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs. A vehicle or vessel that has been used to transport a substance other than food or a substance contained on the lists adopted by the director and secretary under RCW 69.04.960 and 69.04.970, may be rehabilitated and used to transport food only if:

(1) The vehicle or vessel is rehabilitated in accordance with the procedures established by the director and secretary in RCW 69.04.970;

(2) The vehicle or vessel is inspected by the department of agriculture, and the department determines that transporting food in the cargo carrying portion of the vehicle or vessel will not pose a health hazard;

(3) A certificate accompanies the vehicle or vessel certifying that the vehicle or vessel has been rehabilitated and inspected and is authorized to transport food, and is dated and signed by the director of agriculture, or an authorized agent of the director. Such certificates shall be maintained for the life of the vehicle by the owner of the vehicle or vessel, and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture; and

(4) The vehicle or vessel is marked as required by RCW 69.04.955 or is marked and satisfies the requirements of RCW 69.04.965 which are not inconsistent with the rehabilitation authorized by this section.

No vehicle or vessel that has transported in bulk form a substance contained on the list adopted under RCW 69.04.970 qualifies for rehabilitation.

The cost of rehabilitation shall be borne by the vehicle or vessel owner. The director shall determine a reasonable fee to be imposed on the vehicle or vessel owner based on inspection, laboratory, and administrative costs incurred by the department in rehabilitating the vehicle or vessel. [1990 c 202 § 6.]

69.04.980 Transport of bulk foods—Penalties. A person who knowingly transports a cargo in violation of RCW 69.04.955 or who knowingly causes a cargo to be transported in violation of RCW 69.04.955 is subject to a civil penalty, as determined by the director of agriculture, for each such violation as follows:

(1) For a person's first violation or first violation in a period of five years, not more than five thousand dollars;

(2) For a person's second or subsequent violation within five years of a previous violation, not more than ten thousand dollars.

The director shall impose the penalty by an order which is subject to the provisions of chapter 34.05 RCW.

The director shall, wherever practical, secure the assistance of other public agencies, including but not limited to the department of health, the utilities and transportation commission, and the state patrol, in identifying and investigating potential violations of RCW 69.04.955. [1990 c 202 § 7.]

Chapter 69.06

FOOD AND BEVERAGE ESTABLISHMENT WORKERS' PERMITS

Sections

69.06.010	Food and beverage service worker's permit—Filing, duration.
69.06.020	Permit exclusive and valid throughout state—Fec.
69.06.030	Diseased persons—May not work—Employer may not hire.
69.06.040	Application of chapter to retail food establishments.
69.06.045	Application of chapter to temporary food service establishments.
69.06.050	Permit to be secured within fourteen days from time of employment.
69.06.060	Penalty.
69.06.070	Limited duty permit.

69.06.010 Food and beverage service worker's permit—Filing, duration. (*Effective until July 1, 1999.*)

It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer or kept by the employee on his or her person and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Initial permits shall be valid for two years from the date of issuance. Subsequent renewal permits shall be valid for five years from the date of issuance. [1987 c 223 § 5; 1957 c 197 § 1.]

69.06.010 Food and beverage service worker's permit—Filing, duration—Minimum training requirements. (*Effective July 1, 1999.*) It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer or kept by the employee on his or her person and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Initial permits, including limited duty permits, shall be valid for two years from the date of issuance. Subsequent renewal permits shall be valid for three years from the date of issuance, except an employee may be granted a renewal permit that is valid for five years from the date of issuance if the employee demonstrates that he or she has obtained additional food safety training prior to renewal of the permit. Rules establishing minimum training requirements must be adopted by the state board of health and developed by the department of health in conjunction with local health jurisdictions and representatives of the food service industry. [1998 c 136 § 1; 1987 c 223 § 5; 1957 c 197 § 1.]

Effective date—1998 c 136 § 1: "Section 1 of this act takes effect July 1, 1999." [1998 c 136 § 6.]

69.06.020 Permit exclusive and valid throughout state—Fee. The permit provided in RCW 69.06.010 or 69.06.070 shall be valid in every city, town and county in the state, for the period for which it is issued, and no other health certificate shall be required of such employees by any municipal corporation or political subdivision of the state. The cost of the permit shall be uniform throughout the state and shall be in that amount set by the state board of health. The cost of the permit shall reflect actual costs of food worker training and education, administration of the program, and testing of applicants. The state board of health shall periodically review the costs associated with the permit program and adjust the fee accordingly. The board shall also ensure that the fee is not set at an amount that would prohibit low-income persons from obtaining permits. [1998 c 136 § 3; 1987 c 223 § 6; 1957 c 197 § 2.]

69.06.030 Diseased persons—May not work—Employer may not hire. It shall be unlawful for any person afflicted with any contagious or infectious disease that may be transmitted by food or beverage to work in or about any place where unwrapped or unpackaged food and/or beverage products are prepared or sold, or offered for sale for human consumption and it shall be unlawful for any person knowingly to employ a person so afflicted. Nothing in this section eliminates any authority or requirement to control or suppress communicable diseases pursuant to chapter 70.05 RCW and RCW 43.20.050(2)(e). [1998 c 136 § 4; 1957 c 197 § 3.]

69.06.040 Application of chapter to retail food establishments. This chapter shall apply to any retail establishment engaged in the business of food handling or food service. [1987 c 223 § 7; 1957 c 197 § 4.]

69.06.045 Application of chapter to temporary food service establishments. As used in this section, "temporary food service establishment" means a food service establishment operating at a fixed location for a period of time of not more than twenty-one consecutive days in conjunction with a single event or celebration. This chapter applies to temporary food service establishments with the following exceptions:

(1) Only the operator or person in charge of a temporary food service establishment shall be required to secure a food and beverage service workers' permit; and

(2) The operator or person in charge of a temporary food service establishment shall secure a valid food and beverage service workers' permit before commencing the food handling operation. [1987 c 223 § 8.]

69.06.050 Permit to be secured within fourteen days from time of employment. Individuals under this chapter must obtain a food and beverage service workers' permit within fourteen days from commencement of employment. Individuals under this chapter may work for up to fourteen calendar days without a food and beverage service workers' permit, provided that they receive information or training regarding safe food handling practices from the employer prior to commencement of employment. Documentation that the information or training has been provided to the individual must be kept on file by the employer. [1998 c 136 § 5; 1957 c 197 § 5.]

69.06.060 Penalty. Any violation of the provisions of this chapter shall be a misdemeanor. [1957 c 197 § 6.]

69.06.070 Limited duty permit. The local health officer may issue a limited duty permit when necessary to reasonably accommodate a person with a disability. The limited duty permit must specify the activities that the permit holder may perform, and must include only activities having low public health risk. [1998 c 136 § 2.]

Chapter 69.07

WASHINGTON FOOD PROCESSING ACT

Sections

69.07.005	Legislative declaration.
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69.07.050	Renewal of license—Additional fee, when.
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69.07.135	Unlawful to sell or distribute food from unlicensed processor.
69.07.140	Violations—Warning notice.

- 69.07.150 Violations—Penalties.
- 69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.
- 69.07.170 Definitions.
- 69.07.180 Bottled water labeling standards.
- 69.07.190 Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements.
- 69.07.900 Chapter is cumulative and nonexclusive.
- 69.07.910 Severability—1967 ex.s. c 121.
- 69.07.920 Short title.

69.07.005 Legislative declaration. The processing of food intended for public consumption is important and vital to the health and welfare both immediate and future and is hereby declared to be a business affected with the public interest. The provisions of this chapter [1991 c 137] are enacted to safeguard the consuming public from unsafe, adulterated, or misbranded food by requiring licensing of all food processing plants as defined in this chapter and setting forth the requirements for such licensing. [1991 c 137 § 1.]

69.07.010 Definitions. For the purposes of this chapter:

- (1) "Department" means the department of agriculture of the state of Washington;
- (2) "Director" means the director of the department;
- (3) "Food" means any substance used for food or drink by any person, including ice, bottled water, and any ingredient used for components of any such substance regardless of the quantity of such component;
- (4) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media;
- (5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: PROVIDED, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;
- (6) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, establishments processing foods in any manner for resale shall be considered a food processing plant as to such processing;
- (7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants;

(8) "Person" means an individual, partnership, corporation, or association. [1992 c 34 § 3; 1991 c 137 § 2; 1967 ex.s. c 121 § 1.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.020 Enforcement—Rules—Adoption—Contents—Standards. (1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods. [1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

69.07.040 Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee. It shall be unlawful for any person to operate a food processing plant or process foods in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by the license fee. The license fee is determined by computing the gross annual sales for the accounting year immediately preceding the license year. If the license is for a new operator, the license fee shall be based on an estimated gross annual sales for the initial license period.

If gross annual sales are:	The license fee is:
\$0 to \$50,000	\$55.00
\$50,001 to \$500,000	\$110.00
\$500,001 to \$1,000,000	\$220.00
\$1,000,001 to \$5,000,000	\$385.00
\$5,000,001 to \$10,000,000	\$550.00
Greater than \$10,000,000	\$825.00

Such application shall include the full name of the applicant for the license and the location of the food processing plant

he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. The application shall also specify the type of food to be processed and the method or nature of processing operation or preservation of that food and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities or has a high potential for harm, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter. The director may waive the licensure requirements of this chapter for a person's operations at a facility if the person has obtained a milk processing plant license under chapter 15.36 RCW to conduct the same or a similar operation at the facility. [1995 c 374 § 21. Prior: 1993 sp.s. c 19 § 11; 1993 c 212 § 2; 1992 c 160 § 3; 1991 c 137 § 3; 1988 c 5 § 1; 1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.050 Renewal of license—Additional fee, when.

If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he or she has not operated a food processing plant or processed foods subsequent to the expiration of his or her license. [1992 c 160 § 4; 1991 c 137 § 4; 1988 c 5 § 2; 1967 ex.s. c 121 § 5.]

69.07.060 Denial, suspension or revocation of license—Grounds. The director may, subsequent to a hearing thereon, deny, suspend or revoke any license

provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.07.065. [1991 c 137 § 5; 1979 c 154 § 19; 1967 ex.s. c 121 § 6.]

Severability—1979 c 154: See note following RCW 15.49.330.

69.07.065 Suspension of license summarily—

Reinstatement. (1) Whenever the director finds an establishment operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an onsite inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food processing operations shall immediately cease. However, the director may reinstate the license when the condition that caused the suspension has been abated to the director's satisfaction. [1991 c 137 § 6.]

69.07.070 Rules and regulations, hearings subject to

Administrative Procedure Act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.05 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1967 ex.s. c 121 § 7.]

69.07.080 Inspections by department—Access—

When. For purpose of determining whether the rules adopted pursuant to RCW 69.07.020, as now or hereafter amended are complied with, the department shall have access for inspection purposes to any part, portion or area of a food processing plant, and any records required to be kept under the provisions of this chapter or rules and regulations adopted hereunder. Such inspection shall, when possible, be made during regular business hours or during any working shift of said food processing plant. The department may,

however, inspect such food processing plant at any time when it has received information that an emergency affecting the public health has arisen and such food processing plant is or may be involved in the matters causing such emergency. [1969 c 68 § 3; 1967 ex.s. c 121 § 8.]

69.07.085 Sanitary certificates—Fee. The department may issue sanitary certificates to food processors under this chapter subject to such requirements as it may establish by rule. The fee for issuance shall be fifty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund. [1995 c 374 § 23; 1988 c 254 § 9.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.095 Authority of director and personnel. The director or the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement. [1991 c 137 § 7.]

69.07.100 Establishments exempted from provisions of chapter. The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

- (1) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;
- (2) Chapter 69.28 RCW, the Washington state honey act;
- (3) Chapter 16.49 RCW, the Meat inspection act;
- (4) Title 66 RCW, relating to alcoholic beverage control; and
- (5) Chapter 69.30 RCW, the Sanitary control of shellfish act: PROVIDED, That if any such establishments process foods not specifically provided for in the above entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments. [1995 c 374 § 22; 1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.110 Enforcement of chapter. The department may use all the civil remedies provided for in chapter 69.04 RCW (The Uniform Washington Food, Drug, and Cosmetic Act) in carrying out and enforcing the provisions of this chapter. [1967 ex.s. c 121 § 11.]

69.07.120 Disposition of money into food processing inspection account. All moneys received by the department under the provisions of this chapter shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter and chapter 69.04 RCW. [1992 c 160 § 5; 1967 ex.s. c 121 § 12.]

69.07.135 Unlawful to sell or distribute food from unlicensed processor. It shall be unlawful to resell, to offer for resale, or to distribute for resale in intrastate commerce any food processed in a food processing plant, which has not obtained a license, as provided for in this chapter, once notification by the director has been given to the person or persons reselling, offering, or distributing food for resale, that said food is from an unlicensed processing operation. [1991 c 137 § 8.]

69.07.140 Violations—Warning notice. Nothing in this chapter shall be construed as requiring the department to report for prosecution violations of this chapter when it believes that the public interest will best be served by a suitable notice of warning in writing. [1967 ex.s. c 121 § 14.]

69.07.150 Violations—Penalties. (1) Any person violating any provision of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. A misdemeanor under this section is punishable to the same extent that a misdemeanor is punishable under RCW 9A.20.021 and a gross misdemeanor under this section is punishable to the same extent that a gross misdemeanor is punishable under RCW 9A.20.021.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense. [1991 c 137 § 9; 1967 ex.s. c 121 § 15.]

69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW. The authority granted to the director and to the department under the provisions of the Uniform Washington Food, Drug, and Cosmetic Act (chapter 69.04 RCW), as now or hereafter amended, shall not be deemed to be reduced or otherwise impaired as a result of any provision or provisions of the Washington Food Processing Act (chapter 69.07 RCW). [1969 c 68 § 4.]

69.07.170 Definitions. As used in RCW 69.07.180 and 69.07.190:

(1) "Artesian water" means bottled water from a well tapping a confined aquifer in which the water level stands above the water table. "Artesian water" shall meet the requirements of "natural water."

(2) "Bottled water" means water that is placed in a sealed container or package and is offered for sale for human consumption or other consumer uses.

(3) "Carbonated water" or "sparkling water" means bottled water containing carbon dioxide.

(4) "Department" means the department of agriculture.

(5) "Distilled water" means bottled water that has been produced by a process of distillation and meets the definition of purified water in the most recent edition of the United States Pharmacopeia.

(6) "Drinking water" means bottled water obtained from an approved source that has at minimum undergone treatment consisting of filtration, activated carbon or particulate, and ozonation or an equivalent disinfection process, or that meets the requirements of the federal safe drinking water act of 1974 as amended and complies with all department of health rules regarding drinking water.

(7) "Mineral water" means bottled water that contains not less than five hundred parts per million total dissolved solids. "Natural mineral water" shall meet the requirements of "natural water."

(8) "Natural water" means bottled spring, mineral, artesian, or well water that is derived from an underground formation and may be derived from a public water system as defined in RCW 70.119A.020 only if that supply has a single source such as an actual spring, artesian well, or pumped well, and has not undergone any treatment that changes its original chemical makeup except ozonation or an equivalent disinfection process.

(9) "Plant operator" means a person who owns or operates a bottled water plant.

(10) "Purified water" means bottled water produced by distillation, deionization, reverse osmosis, or other suitable process and that meets the definition of purified water in the most recent edition of the United States Pharmacopeia. Water that meets this definition and is vaporized, then condensed, may be labeled "distilled water."

(11) "Spring water" means water derived from an underground formation from which water flows naturally to the surface of the earth. "Spring water" shall meet the requirements of "natural water."

(12) "Water dealer" means a person who imports bottled water or causes bulk water to be transported for bottling for human consumption or other consumer uses.

(13) "Well water" means water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer. "Well water" shall meet the requirements of "natural water." [1992 c 34 § 1.]

Severability—1992 c 34: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 34 § 9.]

69.07.180 Bottled water labeling standards. All bottled water must conform to applicable federal and state labeling laws and be labeled in compliance with the following standards:

(1) Mineral water may be labeled "mineral water." Bottled water to which minerals are added shall be labeled so as to disclose that minerals are added, and may not be labeled "natural mineral water."

(2) Spring water may be labeled "spring water" or "natural spring water."

(3) Water containing carbon dioxide that emerges from the source and is bottled directly with its entrapped gas or from which the gas is mechanically separated and later reintroduced at a level not higher than naturally occurring in

the water may bear on its label the words "naturally carbonated" or "naturally sparkling."

(4) Bottled water that contains carbon dioxide other than that naturally occurring in the source of the product shall be labeled with the words "carbonated," "carbonation added," or "sparkling" if the carbonation is obtained from a natural or manufactured source.

(5) Well water may be labeled "well water" or "natural well water."

(6) Artesian water may be labeled "artesian water" or "natural artesian water."

(7) Purified water may be labeled "purified water" and the method of preparation shall be stated on the label, except that purified water produced by distillation may be labeled as "distilled water."

(8) Drinking water may be labeled "drinking water."

(9) The use of the word "spring," or any derivative of "spring" other than in a trademark, trade name, or company name, to describe water that is not spring water is prohibited.

(10) A product meeting more than one of the definitions in RCW 69.07.170 may be identified by any of the applicable product types defined in RCW 69.07.170, except where otherwise specifically prohibited.

(11) Supplemental printed information and graphics may appear on the label but shall not imply properties of the product or preparation methods that are not factual. [1992 c 34 § 6.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.190 Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements. Bottled soft drinks, soda, or seltzer products commonly recognized as soft drinks and identified on the product identity panel with a common or usual name other than one of those specified in RCW 69.07.170 are exempt from the requirements of RCW 69.07.180. Water that is not in compliance with the requirements of RCW 69.07.180 may not be identified, labeled, or advertised as "artesian water," "bottled water," "distilled water," "natural water," "purified water," "spring water," or "well water." [1992 c 34 § 7.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.900 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1967 ex.s. c 121 § 16.]

69.07.910 Severability—1967 ex.s. c 121. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 121 § 17.]

69.07.920 Short title. This chapter shall be known and designated as the Washington food processing act. [1967 ex.s. c 121 § 18.]

Chapter 69.10

FOOD STORAGE WAREHOUSES

Sections

- 69.10.005 Definitions.
- 69.10.010 Inspection of food storage warehouses—Powers of director.
- 69.10.015 Annual license required—Director's duties—Fee—Application—Renewal.
- 69.10.020 Exemption from licensure—Independent inspection—Report to department.
- 69.10.025 Application for renewal of license after expiration date—Additional fee.
- 69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required.
- 69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license.
- 69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce.
- 69.10.045 Disposition of moneys received under this chapter.
- 69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses.
- 69.10.055 Rules.
- 69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements.
- 69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68.

69.10.005 Definitions. For the purpose of this chapter:

(1) "Food storage warehouse" means any premises, establishment, building, room area, facility, or place, in whole or in part, where food is stored, kept, or held for wholesale distribution to other wholesalers or to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer. Food storage warehouses include, but are not limited to, facilities where food is kept or held refrigerated or frozen and include facilities where food is stored to the account of another firm and/or is owned by the food storage warehouse. "Food storage warehouse" does not include grain elevators or fruit and vegetable storage and packing houses that store, pack, and ship fresh fruit and vegetables even though they may use refrigerated or controlled atmosphere storage practices in their operation. However, this chapter applies to multiple food storage operations that also distribute or ripen fruits and vegetables.

(2) "Department" means the Washington department of agriculture.

(3) "Director" means the director of the Washington department of agriculture.

(4) "Food" means the same as defined in RCW 69.04.008.

(5) "Independent sanitation consultant" means an individual, partnership, cooperative, or corporation that by reason of education, certification, and experience has satisfactorily demonstrated expertise in food and dairy sanitation and is approved by the director to advise on such areas including, but not limited to: Principles of cleaning and sanitizing food processing plants and equipment; rodent, insect, bird, and other pest control; principals [principles] of hazard analysis critical control point; basic food product labeling; principles of proper food storage and protection; proper personnel work practices and attire; sanitary design, construction, and installation of food plant facilities, equip-

ment, and utensils; and other pertinent food safety issues. [1995 c 374 § 8.]

69.10.010 Inspection of food storage warehouses—Powers of director. The director or his or her representative may inspect food storage warehouses for compliance with the provisions of chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW as deemed necessary by the director. Any food storage warehouse found to not be in substantial compliance with chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW will be reinspected as deemed necessary by the director to determine compliance. This does not preclude the director from using any other remedies as provided under chapter 69.04 RCW to gain compliance or to embargo products as provided under RCW 69.04.110 to protect the public from adulterated foods. [1995 c 374 § 9.]

69.10.015 Annual license required—Director's duties—Fee—Application—Renewal. Except as provided in this section and RCW 69.10.020, it shall be unlawful for any person to operate a food storage warehouse in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. Application for a license or license renewal shall be on a form prescribed by the director and accompanied by the license fee. The license fee is fifty dollars.

For a food storage warehouse that has been inspected on at least an annual basis for compliance with the provisions of the current good manufacturing practices (Title 21 C.F.R. part 110) by a federal agency or by a state agency acting on behalf of and under contract with a federal agency and that is not exempted from licensure by RCW 69.10.020, the annual license fee for the warehouse is twenty-five dollars.

The application shall include the full name of the applicant for the license and the location of the food storage warehouse he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation must be given on the application. The application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted under this chapter by the department, the applicant shall be issued a license or renewal thereof. The director shall waive licensure under this chapter for firms that are licensed under the provisions of chapter 69.07 or 15.36 RCW. [1995 c 374 § 10.]

69.10.020 Exemption from licensure—Independent inspection—Report to department. A food storage warehouse that is inspected for compliance with the current good manufacturing practices (Title 21 C.F.R. part 110) on at least an annual basis by an independent sanitation consultant approved by the department shall be exempted from licensure under this chapter.

A report identifying the inspector and the inspecting entity, the date of the inspection, and any violations noted on such inspection shall be forwarded to the department by the food storage warehouse within sixty days of the completion of the inspection. An inspection shall be conducted and an inspection report for a food storage warehouse shall be filed with the department at least once every twelve months or the warehouse shall be licensed under this chapter and inspected by the department for a period of two years. [1995 c 374 § 11.]

69.10.025 Application for renewal of license after expiration date—Additional fee. If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. [1995 c 374 § 12.]

69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required. The director may, subsequent to a hearing thereon, deny, suspend, or revoke any license provided for in this chapter if he or she determines that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the director;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make such records available if requested pursuant to the provisions of this chapter;

(3) Refused the department access to any portion or area of the food storage warehouse for the purpose of carrying out the provisions of this chapter;

(4) Refused the department access to any records required to be kept under the provisions of this chapter;

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington food, drug, and cosmetic act, or any rules adopted under chapter 69.04 RCW.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.10.035. [1995 c 374 § 13.]

69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license. (1) Whenever the director finds a food storage warehouse operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the

license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food distribution operations shall immediately cease. However, the director may reinstate the license if the condition that caused the suspension has been abated to the director's satisfaction. [1995 c 374 § 14.]

69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce. It is unlawful to sell, offer for sale, or distribute in intrastate commerce food from or stored in a food storage warehouse that is required to be licensed under this chapter but that has not obtained a license, once notification by the director has been given to the persons selling, offering, or distributing food for sale, that the food is in or from such an unlicensed food storage warehouse. [1995 c 374 § 15.]

69.10.045 Disposition of moneys received under this chapter. All moneys received by the department under provisions of this chapter, except moneys collected for civil penalties levied under this chapter, shall be paid into an account created in the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out provisions of this chapter and chapter 69.04 RCW. All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund. [1995 c 374 § 16.]

69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses. (1) Except as provided in subsection (2) of this section, the department may use all the civil remedies provided under chapter 69.04 RCW in carrying out and enforcing the provisions of this chapter.

(2) Civil penalties are intended to be used to obtain compliance and shall not be collected if a warehouse successfully completes a mutually agreed upon compliance agreement with the department. A warehouse that enters into a compliance agreement with the department shall pay only for inspections conducted by the department and any laboratory analyses as required by the inspections as outlined and agreed to in the compliance agreement. In no event shall the fee for these inspections and analyses exceed four hundred dollars per inspection or one thousand dollars in total. [1995 c 374 § 17.]

69.10.055 Rules. (1) The department shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

(2) The adoption of rules under the provisions of this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act. [1995 c 374 § 18.]

69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements. The director or director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are

empowered to administer oaths of verification on the statement. [1995 c 374 § 19.]

69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68. See note following RCW 15.36.012.

Chapter 69.25

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

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69.25.900	Savings.
69.25.910	Chapter is cumulative and nonexclusive.
69.25.920	Severability—1975 1st ex.s. c 201.

69.25.930 Short title.

69.25.010 Legislative finding. Eggs and egg products are an important source of the state's total supply of food, and are used in food in various forms. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, unadulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the wholesome, unadulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in intrastate commerce, or substantially affect such commerce, and that regulation by the director, as contemplated by this chapter, is appropriate to protect the health and welfare of consumers. [1975 1st ex.s. c 201 § 2.]

69.25.020 Definitions. When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: PROVIDED, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plans;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer: PROVIDED, That for the purpose of this chapter, "sell" or

"sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other species of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(38) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(39) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs. [1995 c 374 § 25; 1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1982 c 182: See RCW 19.02.901.

69.25.030 Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director. The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal egg products inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted thereunder. In accord with such

declared purpose, any regulations adopted under the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), in effect on July 1, 1975, are hereby deemed to have been adopted under the provisions hereof. Further, to promote such uniformity, any regulations adopted hereafter under the provisions of the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), and published in the federal register, shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.05 RCW, as now or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal egg products inspection act, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.05 RCW, as now or hereafter amended.

The director, in addition to the foregoing, may adopt any rule and regulation necessary to carry out the purpose and provisions of this chapter. [1975 1st ex.s. c 201 § 4.]

69.25.040 Application of administrative procedure act. The adoption, amendment, modification, or revocation of any rules or regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued or denied under the provisions of this chapter, shall be subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, as now or hereafter amended. [1975 1st ex.s. c 201 § 5.]

69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure. No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department; such license shall expire on the master license expiration date. Application for an egg dealer license or egg dealer branch license, shall be made through the master license system. The annual egg dealer license fee shall be thirty dollars and the annual egg dealer branch license fee shall be fifteen dollars. A copy of the master license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. Such license and permanent egg handler

or dealer's number shall be nontransferable. [1995 c 374 § 26; 1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1982 c 182: See RCW 19.02.901.

Master license—Expiration date: RCW 19.02.090.

Master license system

definition: RCW 69.25.020(38).

existing licenses or permits registered under, when: RCW 19.02.810.
to include additional licenses: RCW 19.02.110.

69.25.060 Egg handler's or dealer's license—Late renewal fee. If the application for the renewal of an egg handler's or dealer's license is not filed before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 44; 1975 1st ex.s. c 201 § 7.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

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

69.25.070 Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance. The department may deny, suspend, revoke, or issue a license or a conditional license if it determines that an applicant or licensee has committed any of the following acts:

(1) That the applicant or licensee is violating or has violated any of the provisions of this chapter or rules and regulations adopted thereunder.

(2) That the application contains any materially false or misleading statement or involves any misrepresentation by any officer, agent, or employee of the applicant.

(3) That the applicant or licensee has concealed or withheld any facts regarding any violation of this chapter by any officer, agent, or employee of the applicant or licensee. [1975 1st ex.s. c 201 § 8.]

69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers. (1) For the purpose of preventing the entry into or movement in intrastate commerce of any egg product which is capable of use as human food and is misbranded or adulterated, the director shall, whenever processing operations are being conducted, unless under inspection by the United States department of agriculture, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under RCW 69.25.170. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of RCW 69.25.170(1)(a) in the preparation of any articles for human food, shall be deemed to be a plant processing egg products, with respect to such operations.

(2) The director, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(3) Eggs and egg products found to be adulterated at official plants shall be condemned, and if no appeal be taken from such determination or condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: PROVIDED, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the director determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(4) The director shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under RCW 69.25.140, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of RCW 69.25.140, except that the director shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of the director shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter. [1975 1st ex.s. c 201 § 9.]

69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met. (1) The operator of each official plant shall operate such plant in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the director to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(2) The director shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. [1975 1st ex.s. c 201 § 10.]

69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal. (1) Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the director, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations

of the director, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the director may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(2) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the director. If the director has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the director, such person may request a hearing, but the use of the labeling or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business. [1975 1st ex.s. c 201 § 11.]

69.25.110 Prohibited acts and practices. (1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in intrastate commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for intrastate commerce except that such eggs may be so possessed and used when authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(3) No person shall process any egg products for intrastate commerce at any plant except in compliance with the requirements of this chapter.

(4) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in intrastate commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of RCW 69.25.100.

(5) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(6) No person shall:

(a) Manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director;

(b) Forge or alter any official device, mark, or certificate;

(c) Without authorization from the director, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld from use under RCW 69.25.100 after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

(d) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(e) Knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(f) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director;

(g) Knowingly represent that any article has been inspected or exempted, under this chapter when in fact it has not been so inspected or exempted; and

(h) Refuse access, at any reasonable time, to any representative of the director, to any plant or other place of business subject to inspection under any provisions of this chapter.

(7) No person, while an official or employee of the state or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States government or the state in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which the originator or relator of such information claims to be entitled to protection as a trade secret. [1975 1st ex.s. c 201 § 12.]

69.25.120 Director to cooperate with other agencies—May conduct examinations. The director shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with any state, federal or other governmental agencies in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the director may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. [1975 1st ex.s. c 201 § 13.]

69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required. Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in intrastate commerce, shall be denatured or identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in intrastate commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or identified as required by the regulations of the director. [1975 1st ex.s. c 201 § 14.]

69.25.140 Records required, access to and copying of. For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in intrastate commerce or in interstate commerce, or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the director may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of the director, permit him at reasonable times to have access to and to copy all such records. [1975 1st ex.s. c 201 § 15.]

69.25.150 Penalties—Liability of employer—Defense—Interference with person performing official duties. (1)(a) Any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation. Any offense committed more than five years after a previous conviction shall be considered a first offense. A misdemeanor under this section is punishable to the same extent that a misdemeanor is punishable under RCW 9A.20.021 and a gross misdemeanor under this section is punishable to the same extent that a gross misdemeanor is punishable under RCW 9A.20.021.

(b) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to (a) of this subsection, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(2) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or subsection (3) of this section, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

(3) Notwithstanding any other provision of law any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his or her official duties under this

chapter shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both. [1995 c 374 § 27; 1992 c 7 § 47; 1975 1st ex.s. c 201 § 16.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.160 Notice of violation—May take place of prosecution. Before any violation of this chapter, other than RCW 69.25.150(3), is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning. [1975 1st ex.s. c 201 § 17.]

69.25.170 Exemptions permitted by rule of director.

(1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(e) The sale of eggs by any egg producer with an annual egg production from a flock of three thousand hens or less.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter. [1995 c 374 § 28; 1975 1st ex.s. c 201 § 18.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.180 Limiting entry of eggs and egg products into official plants. The director may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter. [1975 1st ex.s. c 201 § 19.]

69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks. Whenever any eggs or egg products subject to this chapter are found by any authorized representative of the director upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter, or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the director, such articles may be embargoed by such representative for a reasonable period but not to exceed twenty days, pending action under RCW 69.25.200 or notification of any federal or other governmental authorities having jurisdiction over such articles, and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the director that the articles are eligible to retain such marks. [1975 1st ex.s. c 201 § 20.]

69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required. When the director has embargoed any eggs or egg products, he shall petition the superior court of the county in which the eggs or egg products are located for an order affirming such embargo. Such court shall have jurisdiction for cause shown and after a prompt hearing to any claimant of eggs or egg products, shall issue an order which directs the removal of such embargo or the destruction or correction and release of such eggs and egg products. An order for destruction or the correction and release of such eggs and egg products shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond as the court finds indicated in the circumstance. [1975 1st ex.s. c 201 § 21.]

69.25.210 Embargo—Order affirming not required, when. The director need not petition the superior court as provided for in RCW 69.25.200 if the owner or claimant of such eggs or egg products agrees in writing to the disposition of such eggs or egg products as the director may order. [1975 1st ex.s. c 201 § 22.]

69.25.220 Embargo—Consolidation of petitions. Two or more petitions under RCW 69.25.200 which pend at

the same time and which present the same issue and claimant hereunder may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or claimant. [1975 1st ex.s. c 201 § 23.]

69.25.230 Embargo—Sampling of article. The claimant in any proceeding by petition under RCW 69.25.200 shall be entitled to receive a representative sample of the article subject to such proceedings upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 201 § 24.]

69.25.240 Condemnation—Recovery of damages restricted. No state court shall allow the recovery of damages for administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 201 § 25.]

69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency. There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number. [1995 c 374 § 29; 1993 sp.s. c 19 § 12; 1975 1st ex.s. c 201 § 26.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels. Any egg handler or dealer may prepay the assessment provided for in RCW 69.25.250 by purchasing Washington state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer or printer may apply to the director for a permit to place reasonable facsimiles of the Washington state egg seals to be imprinted on egg containers or on the identification labels which show egg grade and size and the name of the egg handler or dealer. The director shall, from time to time, prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter, whenever he finds that a violation of the terms under which the permit has been granted has been violated. [1979 ex.s. c 238 § 10; 1975 1st ex.s. c 201 § 27.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty. Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director at such frequency as is deemed necessary by the director. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers. [1987 c 393 § 16; 1975 1st ex.s. c 201 § 28.]

69.25.280 Assessment—Use of proceeds. The proceeds from assessment fees paid to the director shall be retained for the inspection of eggs and carrying out the provisions of this chapter relating to eggs. [1975 1st ex.s. c 201 § 29.]

69.25.290 Assessment—Exclusions. The assessments provided in this chapter shall not apply to:

- (1) Sale and shipment to points outside of this state;
- (2) Sale to the United States government and its instrumentalities;
- (3) Sale to breaking plants for processing into egg products;
- (4) Sale between egg dealers. [1975 1st ex.s. c 201 § 30.]

69.25.300 Transfer of moneys in state egg account. All moneys in the state egg account, created by *RCW 69.24.450, at the time of July 1, 1975, shall be transferred to the director and shall be retained and expended for administering and carrying out the purposes of this chapter. [1975 1st ex.s. c 201 § 31.]

*Reviser's note: RCW 69.24.450 was repealed by 1975 1st ex.s. c 201 § 40.

69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty. (1) All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall be a violation for any egg handler or dealer to use a container that bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to use. The director may in addition require the obliteration of any or all markings that may be on any container which will be used for eggs by an egg handler or dealer.

(2) Notwithstanding subsection (1) of this section and following written notice to the director, licensed egg handlers and dealers may use new containers bearing another

handler's or dealer's permanent number on a temporary basis, in any event not longer than one year, with the consent of such other handler or dealer for the purpose of using up existing container stocks. Sale of container stock shall constitute agreement by the parties to use the permanent number. [1995 c 374 § 30; 1975 1st ex.s. c 201 § 32.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012

69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation. (1)

In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: PROVIDED, That no retailer or other purchaser shall be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were purchased to the effect that they, at the time of purchase, conformed to the information required by the director on such invoice: PROVIDED FURTHER, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

(2) Each retailer and each distributor shall store shell eggs awaiting sale or display eggs under clean and sanitary conditions in areas free from rodents and insects. Shell eggs must be stored up off the floor away from strong odors, pesticides, and cleaners.

(3) After being received at the point of first purchase, all graded shell eggs packed in containers for the purpose of sale to consumers shall be held and transported under refrigeration at ambient temperatures no greater than forty-five degrees Fahrenheit (seven and two-tenths degrees Celsius). This provision shall apply without limitation to retailers, institutional users, dealer/wholesalers, food handlers, transportation firms, or any person who handles eggs after the point of first purchase.

(4) No invoice shall be required on eggs when packed for sale to the United States department of defense, or a component thereof, if labeled with grades promulgated by the United States secretary of agriculture. [1995 c 374 § 31; 1975 1st ex.s. c 201 § 33.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.900 Savings. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1975. [1975 1st ex.s. c 201 § 35.]

69.25.910 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy at law. [1975 1st ex.s. c 201 § 37.]

69.25.920 Severability—1975 1st ex.s. c 201. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 201 § 38.]

69.25.930 Short title. This act may be known and cited as the "Washington wholesome eggs and egg products act" [1975 1st ex.s. c 201 § 39.]

Chapter 69.28

HONEY

Sections

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Bees and apiaries: Chapter 15.60 RCW.

Commission merchants, agricultural products: Title 20 RCW.

69.28.020 Enforcement power and duty of director and agents. The director is hereby empowered, through his duly authorized agents, to enforce all provisions of this chapter. The director shall have the power to define, promulgate and enforce such reasonable regulations as he may deem necessary in carrying out the provisions of this chapter. [1939 c 199 § 29; RRS § 6163-29. FORMER PART OF SECTION: 1939 c 199 § 44 now codified as RCW 69.28.025.]

69.28.025 Rules and regulations have force of law. Any rules or regulations promulgated and published by the director under the provisions of this chapter shall have the force and effect of law. [1939 c 199 § 44; RRS § 6163-44. Formerly RCW 69.28.020, part.]

69.28.030 Rules prescribing standards. The director is hereby authorized, and it shall be his duty, upon the taking effect of this chapter and from time to time thereafter, to adopt, establish and promulgate reasonable rules and regulations specifying grades or standards of quality governing the sale of honey: PROVIDED, That, in the interest of uniformity, such grades and standards of quality shall conform as nearly to those established by the United States department of agriculture as local conditions will permit. [1939 c 199 § 24; RRS § 6163-24.]

69.28.040 Right to enter, inspect, and take samples. The director or any of his duly authorized agents shall have the power to enter and inspect at reasonable times every place, vehicle, plant or other place where honey is being produced, stored, packed, transported, exposed, or offered for sale, and to inspect all such honey and the containers thereof and to take for inspection such samples of said honey as may be necessary. [1939 c 199 § 28; RRS § 6163-28.]

69.28.050 Containers to be labeled. It shall be unlawful to deliver for shipment, ship, transport, sell, expose or offer for sale any containers or subcontainers of honey within this state unless they shall be conspicuously marked with the name and address of the producer or distributor, the net weight of the honey, the grade of the honey, and, if imported from any foreign country, the name of the country or territory from which the said honey was imported, or if a blend of honey, any part of which is foreign honey, the container must be labeled with the name of the country or

territory where such honey was produced and the proportion of each foreign honey used in the blend. [1939 c 199 § 32; RRS § 6163-32.]

69.28.060 Requisites of markings. When any markings are used or required to be used under this chapter on any container of honey to identify the container or describe the contents thereof, such markings must be plainly and conspicuously marked, stamped, stenciled, printed, labeled or branded in the English language, in letters large enough to be discernible by any person, on the front, side or top of any container. [1939 c 199 § 35; RRS § 6163-35.]

69.28.070 "Marked" defined—When honey need not be marked. The term "marked" shall mean printed in the English language on the top, front or side of any container containing honey: PROVIDED, That it shall not be necessary to mark honey sold by the producer thereof to any distributor, packer or manufacturer with the net weight, color or grade if the honey is to be used in the manufacture of honey products or is to be graded and packaged by the distributor or packer for resale. [1939 c 199 § 21; RRS § 6163-21.]

69.28.080 Purchaser to be advised of standards—Exceptions. It shall be unlawful for any person to deliver, sell, offer, or expose for sale any honey for human consumption within the state without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality of such honey, according to the standards prescribed by the director, by stamping or printing on the container of any such honey such grade or quality: PROVIDED, This section shall not apply to honey while it is in transit in intrastate commerce from one establishment to the other, to be processed, labeled, or repacked. [1961 c 60 § 1; 1957 c 103 § 1; 1949 c 105 § 6; 1939 c 199 § 39; Rem. Supp. 1949 § 6163-39.]

69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful. It shall be unlawful to forge, counterfeit, simulate, falsely represent or alter without proper authority any mark, stamp, tab, label, seal, sticker or other identification device provided by this chapter. [1961 c 60 § 2; 1939 c 199 § 40; RRS § 6163-40. FORMER PART OF SECTION: 1939 c 199 § 41 now codified as RCW 69.28.095.]

69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director. It shall be unlawful to mutilate, destroy, obliterate, or remove without proper authority, any mark, stamp, tag, label, seal, sticker or other identification device used by the director under the provisions of this chapter. [1939 c 199 § 41; RRS § 6163-41. Formerly RCW 69.28.090, part.]

69.28.100 Marks for "slack-filled" container. Any slack-filled container shall be conspicuously marked "slack-filled". [1939 c 199 § 36; RRS § 6163-36. FORMER PART OF SECTION: 1939 c 199 § 10 now codified as RCW 69.28.270.]

69.28.110 Use of used containers. It shall be unlawful to sell, offer, or expose for sale to the consumer any honey in any second-hand or used containers which formerly contained honey, unless all markings as to grade, name and weight have been obliterated, removed or erased. [1939 c 199 § 37; RRS § 6163-37.]

69.28.120 Floral source labels. Any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone. [1939 c 199 § 34; RRS § 6163-34.]

69.28.130 Adulterated honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any adulterated honey as honey. [1939 c 199 § 26; RRS § 6163-26. FORMER PART OF SECTION: 1939 c 199 §§ 27 and 33 now codified as RCW 69.28.133 and 69.28.135.]

69.28.133 Nonconforming honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any honey which does not conform to the provisions of this chapter or any regulation promulgated by the director under this chapter. [1939 c 199 § 27; RRS § 6163-27. Formerly RCW 69.28.130, part.]

69.28.135 Warning-tagged honey—Movement prohibited. It shall be unlawful to move any honey or containers of honey to which any warning tag or notice has been affixed except under authority from the director. [1939 c 199 § 33; RRS § 6163-33. Formerly RCW 69.28.130, part.]

69.28.140 Possession of unlawful honey as evidence. Possession by any person, of any honey which is sold, exposed or offered for sale in violation of this chapter shall be prima facie evidence that the same is kept or shipped to the said person, in violation of the provisions of this chapter. [1939 c 199 § 30; RRS § 6163-30.]

69.28.170 Inspectors—Prosecutions. It shall be the duty of the director to enforce this chapter and to appoint and employment [employ] such inspectors as may be necessary therefor. The director shall notify the prosecuting attorneys for the counties of the state of violations of this chapter occurring in their respective counties, and it shall be the duty of the respective prosecuting attorneys immediately to institute and prosecute proceeding in their respective counties and to enforce the penalties provided for by this chapter. [1939 c 199 § 43; RRS § 6163-43.]

69.28.180 Violation of rules and regulations unlawful. It shall be unlawful for any person to violate any rule or regulation promulgated by the director under the provisions of this chapter. [1939 c 199 § 25; RRS § 6163-25. FORMER PART OF SECTION: 1939 c 199 § 44 now codified in RCW 69.28.185.]

69.28.185 Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor.

or, and upon violation thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. [1939 c 199 § 42; RRS § 6163-42. Formerly RCW 69.28.180, part.]

69.28.190 "Director" defined. The term "director" means the director of agriculture of the state of Washington or his duly authorized representative. [1939 c 199 § 2; RRS § 6163-2. Formerly RCW 69.28.010, part.]

69.28.200 "Container" defined. The term "container" shall mean any box, crate, chest, carton, barrel, keg, bottle, jar, can or any other receptacle containing honey. [1939 c 199 § 3; RRS § 6163-3.]

69.28.210 "Subcontainer" defined. The term "subcontainer" shall mean any section box or other receptacle used within a container. [1939 c 199 § 4; RRS § 6163-4.]

69.28.220 "Section box" defined. The term "section box" shall mean the wood or other frame in which bees have built a small comb of honey. [1939 c 199 § 5; RRS § 6163-5.]

69.28.230 "Clean and sound containers" defined. The term "clean and sound containers" shall mean containers which are virtually free from rust, stains or leaks. [1939 c 199 § 6; RRS § 6163-6.]

69.28.240 "Pack", "packing", or "packed" defined. The term "pack", "packing", or "packed" shall mean the arrangement of all or part of the subcontainers in any container. [1939 c 199 § 7; RRS § 6163-7.]

69.28.250 "Label" defined. The term "label" shall mean a display of written, printed or graphic matter upon the immediate container of any article. [1939 c 199 § 8; RRS § 6163-8.]

69.28.260 "Person" defined. The term "person" includes individual, partnership, corporation and/or association. [1939 c 199 § 9; RRS § 6163-9.]

69.28.270 "Slack-filled" defined. The term "slack-filled" shall mean that the contents of any container occupy less than ninety-five percent of the volume of the closed container. [1939 c 199 § 10; RRS § 6163-10. Formerly RCW 69.28.100, part.]

69.28.280 "Deceptive arrangement" defined. The term "deceptive arrangement" shall mean any lot or load, arrangement or display of honey which has in any exposed surface, honey which is so superior in quality, appearance or condition, or in any other respects, to any of that which is concealed or unexposed as to materially misrepresent any part of the lot, load, arrangement or display. [1939 c 199 § 11; RRS § 6163-11.]

69.28.290 "Misabeled" defined. The term "misabeled" shall mean the placing or presence of any false or misleading statement, design or device upon, or in connection with, any container or lot of honey, or upon the label, lining or wrapper of any such container, or any placard used in connection therewith, and having reference to such honey. A statement, design or device is false and misleading when the honey to which it refers does not conform in every respect to such statement. [1939 c 199 § 12; RRS § 6163-12.]

69.28.300 "Placard" defined. The term "placard" means any sign, label or designation, other than an oral designation, used with any honey as a description or identification thereof. [1939 c 199 § 13; RRS § 6163-13.]

69.28.310 "Honey" defined. The term "honey" as used herein is the nectar of floral exudations of plants, gathered and stored in the comb by honey bees (*apis mellifica*). It is laevo-rotatory, contains not more than twenty-five percent of water, not more than twenty-five one-hundredths of one percent of ash, not more than eight percent of sucrose, its specific gravity is 1.412, its weight not less than eleven pounds twelve ounces per standard gallon of 231 cubic inches at sixty-eight degrees Fahrenheit. [1939 c 199 § 14; RRS § 6163-14. Formerly RCW 69.28.010, part.]

69.28.320 "Comb-honey" defined. The term "comb-honey" means honey which has not been extracted from the comb. [1939 c 199 § 15; RRS § 6163-15.]

69.28.330 "Extracted honey" defined. The term "extracted honey" means honey which has been removed from the comb. [1939 c 199 § 16; RRS § 6163-16.]

69.28.340 "Crystallized honey" defined. The term "crystallized honey" means honey which has assumed a solid form due to the crystallization of one or more of the natural sugars therein. [1939 c 199 § 17; RRS § 6163-17.]

69.28.350 "Honeydew" defined. The term "honeydew" is the saccharine exudation of plants, other than nectarous exudations, gathered and stored in the comb by honey bees (*apis mellifica*) and is dextrorotatory. [1939 c 199 § 18; RRS § 6163-18. Formerly RCW 69.28.010, part.]

69.28.360 "Foreign material" defined. The term "foreign material" means pollen, wax particles, insects, or materials not deposited by bees. [1937 c 199 § 19; RRS § 6163-19.]

69.28.370 "Foreign honey" defined. The term "foreign honey" means any honey not produced within the continental United States. [1939 c 199 § 20; RRS § 6163-20.]

69.28.380 "Adulterated honey" defined. The term "adulterated honey" means any honey to which has been added honeydew, glucose, dextrose, molasses, sugar, sugar

syrup, invert sugar, or any other similar product or products, other than the nectar of floral exudations of plants gathered and stored in the comb by honey bees. [1939 c 199 § 22; RRS § 6163-22. Formerly RCW 69.28.010, part.]

69.28.390 "Serious damage" defined. The term "serious damage" means any injury or defect that seriously affects the edibility or shipping quality of the honey. [1939 c 199 § 23; RRS § 6163-23.]

69.28.400 Labeling requirements for artificial honey or mixtures containing honey. (1) No person shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded exclusively as "honey", "liquid or extracted honey", "strained honey" or "pure honey"

(2) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled exclusively as honey which shall be made up of honey mixed with any other substance or ingredient.

(3) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed in imitation or semblance of honey, the product shall be labeled with the word "artificial" or "imitation" in the same type size and style as the word "honey";

(4) Whenever any substance or commodity is to be marketed in imitation or semblance of honey, but contains no honey, the product shall not be branded or labeled with the word "honey" and/or depict thereon a picture or drawing of a bee, bee hive, or honeycomb;

(5) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients; nor shall such compound or mixture be branded or labeled exclusively with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled exclusively with the word "honey", unless such article is pure honey. [1975 1st ex.s. c 283 § 1.]

69.28.410 Embargo on honey or product—Notice by director—Removal. Whenever the director shall find, or shall have probable cause to believe, that any honey or product subject to the provisions of this chapter, as now or hereafter amended, is in intrastate commerce, which was introduced into such intrastate commerce in violation of the provisions of this chapter, as now or hereafter amended, he is hereby authorized to affix to such honey or product a notice placing an embargo on such honey or product, and prohibiting its sale in intrastate commerce, and no person shall move or sell such honey or product without first receiving permission from the director to move or sell such honey or product. But if, after such honey or product has been embargoed, the director shall find that such honey or product does not involve a violation of this chapter, as now

or hereafter amended, such embargo shall be forthwith removed. [1975 1st ex.s. c 283 § 3.]

69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond. When the director has embargoed any honey or product he shall, no later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such honey or product, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such honey or product. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1975 1st ex.s. c 283 § 4.]

69.28.430 Consolidation of petitions presenting same issue and claimant. Two or more petitions under this chapter, as now or hereafter amended, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1975 1st ex.s. c 283 § 5.]

69.28.440 Sample of honey or product may be obtained—Procedure. The claimant in any proceeding by petition under this chapter, as now or hereafter amended, shall be entitled to receive a representative sample of the honey or product subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 283 § 6.]

69.28.450 Recovery of damages barred if probable cause for embargo. No state court shall allow the recovery of damages for embargo under this chapter, as now or hereafter amended, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 283 § 7.]

69.28.900 Severability—1939 c 199. If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional. [1939 c 199 § 45; RRS § 6163-45.]

69.28.910 Short title. This chapter may be known and cited as the Washington state honey act. [1939 c 199 § 1; RRS § 6163-1.]

Chapter 69.30

SANITARY CONTROL OF SHELLFISH

Sections

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69.30.145	Civil penalties.
69.30.150	Civil penalties—General provisions.
69.30.900	Severability—1955 c 144.

Shellfish. Chapter 75.24 RCW.

69.30.005 Purpose. The purpose of this chapter is to provide for the sanitary control of shellfish. Protection of the public health requires assurances that commercial shellfish are harvested only from approved growing areas and that processing of shellfish is conducted in a safe and sanitary manner. [1989 c 200 § 2.]

69.30.010 Definitions. When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, clams, and scallops, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

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

(7) "Secretary" means the secretary of health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters;

(c) fourteen horse clams; (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f) fifty pounds of scallops. The poundage in this subsection (8) constitutes weight with the shell.

(9) "Fish and wildlife enforcement officer" means a fisheries patrol officer or an ex officio fisheries patrol officer as defined in *RCW 75.08.011 (4) and (5) or a wildlife agent or an ex officio wildlife agent as defined in **RCW 77.08.010 (5) and (6). [1995 c 147 § 1; 1991 c 3 § 303; 1989 c 200 § 1; 1985 c 51 § 1; 1979 c 141 § 70; 1955 c 144 § 1.]

Reviser's note: *(1) RCW 75.08.011 was amended by 1995 1st sp.s. c 2 § 6, changing subsections (4) and (5) to subsections (5) and (6), respectively.

** (2) RCW 77.08.010 was amended by 1998 c 190 § 111, changing the definition of "wildlife agent" and "ex officio wildlife agent" to "fish and wildlife officer" and "ex officio fish and wildlife officer."

69.30.020 Certificate of compliance required for sale. Only shellfish bearing a certificate of compliance with the sanitary requirements of this state or a state, territory, province or country of origin whose requirements are equal or comparable to those established pursuant to this chapter may be sold or offered for sale in the state of Washington. [1955 c 144 § 2.]

69.30.030 Rules and regulations—Duties of state board of health. The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish, the identification of containers, and the handling, maintenance, and storage of permits, certificates, and records regarding shellfish taken under this chapter. [1995 c 147 § 2; 1955 c 144 § 3.]

69.30.050 Certificates of approval—Shellfish growing areas. Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall meet the requirements of this chapter and the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to remove shellfish in a commercial quantity or for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The department shall cause the shellfish growing area to be inspected and if the area meets the requirements of this chapter and the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and

may be revoked at any time the area is found not to be in compliance with the requirements of this chapter and the state board of health.

Shellfish growing areas from which shellfish are removed in a commercial quantity for purposes other than human consumption including but not limited to bait or seed, shall be readily subject to monitoring and inspections, and shall otherwise be of a character ensuring that shellfish harvested from such areas are not diverted for use as food. A certificate of approval issued by the department for shellfish growing areas from which shellfish are to be removed for purposes other than human consumption shall specify the date or dates and time of harvest and all applicable conditions of harvest, identification by tagging, dying, or other means, transportation, processing, sale, and other factors to ensure that shellfish harvested from such areas are not diverted for use as food. [1995 c 147 § 3; 1985 c 51 § 2; 1955 c 144 § 5.]

69.30.060 Certificates of approval—Culling, shucking, packing establishments. No person shall cull, shuck, or pack shellfish in the state of Washington in a commercial quantity or for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health. Any person desiring to cull, shuck, or pack shellfish within the state of Washington in a commercial quantity or for sale for human consumption, shall apply to the department for a certificate of approval for the establishment in which such operations will be done. The department shall cause such establishment to be inspected, and if the establishment meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the sanitary requirements of the state board of health. [1985 c 51 § 3; 1955 c 144 § 6.]

69.30.070 Certificates of approval—Compliance with other laws and rules required. Any certificate of approval issued under the provisions of this chapter shall not relieve any person from complying with the laws, rules and/or regulations of the department of fish and wildlife, relative to shellfish. [1994 c 264 § 40; 1955 c 144 § 7.]

69.30.080 Certificates of approval—Denial, revocation, suspension, modification—Procedure. The department may deny, revoke, suspend, or modify a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 304; 1989 c 175 § 125; 1979 c 141 § 71; 1955 c 144 § 8.]

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

69.30.085 License, certificate of approval—Denial, revocation, suspension—Prohibited acts. (1) A person

whose license or certificate of approval is denied, revoked, or suspended as a result of violations of this chapter or rules adopted under this chapter may not:

(a) Serve as the person in charge of, be employed by, manage, or otherwise participate to any degree in a shellfish operation licensed or certified under this chapter or rules adopted under this chapter; or

(b) Participate in the harvesting, shucking, packing, or shipping of shellfish in commercial quantities or for sale for human consumption.

(2) This section applies to a person only during the period of time in which that person's license or certificate of approval is denied, revoked, or suspended. [1998 c 44 § 1.]

69.30.110 Possession or sale in violation of chapter—Enforcement—Seizure—Disposal. It is unlawful for any person to possess a commercial quantity of shellfish or to sell or offer to sell shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display immediately a certificate of approval issued under RCW 69.30.050 to an authorized representative of the department, a fish and wildlife enforcement officer, or an ex officio fish and wildlife enforcement officer subjects the grower to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a fish and wildlife enforcement officer, or an ex officio fish and wildlife enforcement officer subjects the processor to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Shellfish seized under this section shall be subject to prompt disposal by the representative or officer and may not be used for human consumption. The state board of health shall develop by rule procedures for the disposal of the seized shellfish. [1995 c 147 § 4; 1985 c 51 § 4; 1979 c 141 § 74; 1955 c 144 § 11.]

69.30.120 Inspection by department—Access to regulated business or entity—Administrative inspection warrant. The department may enter and inspect any shellfish growing area or establishment for the purposes of determining compliance with this chapter and rules adopted under this chapter. The department may inspect all shellfish, all permits, all certificates of approval and all records.

During such inspections the department shall have free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities, vehicles, and other places reasonably considered to be or to have been part of the regulated business or entity, to all ledgers, books, accounts, memorandums, or records required to be compiled or maintained under this chapter or under rules adopted pursuant to this chapter, and to any products, components, or other materials reasonably believed to be or to have been used, processed, or produced by or in connection with the regulated business or activity. In connection with such inspections the department may take such samples or specimens as may be reasonably necessary to determine

whether there exists a violation of this chapter or rules adopted under this chapter.

Inspection of establishments may be conducted between eight a.m. and five p.m. on any weekday that is not a legal holiday, during any time the regulated business or entity has established as its usual business hours, at any time the regulated business or entity is open for business or is otherwise in operation, and at any other time with the consent of the owner or authorized agent of the regulated business or entity.

The department may apply for an administrative inspection warrant to a court of competent jurisdiction and an administrative inspection warrant may issue where:

(1) The department has attempted an inspection under this chapter and access to all or part of the regulated business or entity has been actually or constructively denied; or

(2) There is reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred. [1995 c 147 § 5; 1985 c 51 § 5; 1955 c 144 § 12.]

69.30.130 Water pollution laws and rules applicable. All existing laws and rules and regulations governing the pollution of waters of the state shall apply in the control of pollution of shellfish growing areas. [1955 c 144 § 13.]

69.30.140 Penalties. Any person convicted of violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of license forfeiture under *RCW 75.10.120. [1995 c 147 § 6; 1985 c 51 § 6; 1955 c 144 § 14.]

*Reviser's note: RCW 75.10.120 was repealed by 1998 c 190 § 124.

69.30.145 Civil penalties. As limited by RCW 69.30.150, the department may impose civil penalties for violations of standards set forth in this chapter or rules adopted under RCW 69.30.030. [1989 c 200 § 3.]

69.30.150 Civil penalties—General provisions. (1) In addition to any other penalty provided by law, every person who violates standards set forth in this chapter or rules adopted under RCW 69.30.030 is subject to a penalty of not more than five hundred dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, every day's continuance is a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil

action or in a manner which shows proof of receipt. Any penalty imposed by this section shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department deems proper, giving consideration to the degree of hazard associated with the violation. The department may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred pursuant to this section becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(7) All penalties imposed under this section shall be paid to the state treasury and credited to the general fund. [1989 c 200 § 4.]

69.30.900 Severability—1955 c 144. If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of the application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1955 c 144 § 15.]

Chapter 69.36

WASHINGTON CAUSTIC POISON ACT OF 1929

Sections

69.36.010	Definitions.
69.36.020	Misbranded sales, etc., prohibited—Exceptions.
69.36.030	Condemnation of misbranded packages.
69.36.040	Enforcement—Approval of labels.
69.36.050	Duty to prosecute.
69.36.060	Penalty.
69.36.070	Short title.

Highway transportation of poisons, corrosives, etc.: RCW 46.48.170 through 46.48.180.

69.36.010 Definitions. In this chapter, unless the context or subject matter otherwise requires,

(1) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H₂SO₄) in concentration of ten percent or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five percent or more; (d) carbolic acid (C₆H₅OH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five percent or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H₂C₂O₄) in a concentration of ten percent or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percent or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC₂H₃O₂) in a concentration of twenty percent or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percent or more; (k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO₃) in a concentration of five percent or more, and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH₃), including ammonium hydroxide and "hartshorn", in a concentration of five percent or more.

(2) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON", running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; PROVIDED, That such directions need not appear on labels or stickers on parcels, packages or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use. PROVIDED FURTHER, That this chapter is not to be construed as applying to any substance subject to the chapter, sold at wholesale or retail for use by a retail druggist in filling prescriptions or in dispensing, in pursuance of a prescription

by a physician, dentist, or veterinarian; or for use by or under the direction of a physician, dentist, or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use, or for use in any of the arts and sciences. [1929 c 82 § 1; RRS § 2508-1. Formerly RCW 69.36.010 and 69.36.020, part.]

69.36.020 Misbranded sales, etc., prohibited—Exceptions. No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, in this state any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use; PROVIDED, That household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail; PROVIDED FURTHER, That no person shall be liable to prosecution and conviction under this chapter when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this chapter. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this chapter. [1929 c 82 § 2; RRS § 2508-2. FORMER PART OF SECTION: 1929 c 82 § 1 now codified in RCW 69.32.010.]

69.36.030 Condemnation of misbranded packages. Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any superior court within the jurisdiction of which the same is found and seized for confiscation, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer; but such substance shall not be sold contrary to the laws of the state: PROVIDED, HOWEVER, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in the seizure, and condemnation of substances unfit for human consumption. [1929 c 82 § 3; RRS § 2508-3.]

69.36.040 Enforcement—Approval of labels. The director of agriculture shall enforce the provisions of this chapter, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: PROVIDED, HOWEVER, That in any prosecution under this chapter the fact that any brand or label involved in said prosecution has not been

submitted to said director for approval, or if submitted, has not been approved by him, shall be immaterial. [1929 c 82 § 5; RRS § 2508-5.]

69.36.050 Duty to prosecute. Every prosecuting attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this chapter shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. [1929 c 82 § 6; RRS § 2508-6.]

69.36.060 Penalty. Any person violating the provisions of this chapter shall be guilty of a misdemeanor. [1929 c 82 § 4; RRS § 2508-4.]

69.36.070 Short title. This chapter may be cited as the Washington Caustic Poison Act of 1929. [1929 c 82 § 7; RRS § 2508-7.]

Chapter 69.38

POISONS—SALES AND MANUFACTURING

Sections

- 69.38.010 "Poison" defined.
- 69.38.020 Exemptions from chapter.
- 69.38.030 Poison register—Identification of purchaser.
- 69.38.040 Inspection of poison register—Penalty for failure to maintain register.
- 69.38.050 False representation—Penalty.
- 69.38.060 Manufacturers and sellers of poisons—License required—Penalty.

69.38.010 "Poison" defined. As used in this chapter "poison" means:

- (1) Arsenic and its preparations;
- (2) Cyanide and its preparations, including hydrocyanic acid;
- (3) Strychnine; and
- (4) Any other substance designated by the state board of pharmacy which, when introduced into the human body in quantities of sixty grains or less, causes violent sickness or death. [1987 c 34 § 1.]

69.38.020 Exemptions from chapter. All substances regulated under chapters 15.58, 17.21, 69.04, 69.41, and 69.50 RCW, and chapter 69.45 RCW are exempt from the provisions of this chapter. [1987 c 34 § 2.]

69.38.030 Poison register—Identification of purchaser. It is unlawful for any person, either on the person's own behalf or while an employee of another, to sell any poison without first recording in ink in a "poison register" kept solely for this purpose the following information:

- (1) The date and hour of the sale;
- (2) The full name and home address of the purchaser;
- (3) The kind and quantity of poison sold; and
- (4) The purpose for which the poison is being purchased.

The purchaser shall present to the seller identification which contains the purchaser's photograph and signature.

No sale may be made unless the seller is satisfied that the purchaser's representations are true and that the poison will be used for a lawful purpose. Both the purchaser and the seller shall sign the poison register entry.

If a delivery of a poison will be made outside the confines of the seller's premises, the seller may require the business purchasing the poison to submit a letter of authorization as a substitute for the purchaser's photograph and signature requirements. The letter of authorization shall include the unified business identifier and address of the business, a full description of how the substance will be used, and the signature of the purchaser. Either the seller or the employee of the seller delivering or transferring the poison shall affix his or her signature to the letter as a witness to the signature and identification of the purchaser. The transaction shall be recorded in the poison register as provided in this section. Letters of authorization shall be kept with the poison register and shall be subject to the inspection and preservation requirements contained in RCW 69.38.040. [1988 c 197 § 1; 1987 c 34 § 3.]

69.38.040 Inspection of poison register—Penalty for failure to maintain register. Every poison register shall be open for inspection by law enforcement and health officials at all times and shall be preserved for at least two years after the date of the last entry. Any person failing to maintain the poison register as required in this chapter is guilty of a misdemeanor. [1987 c 34 § 4.]

69.38.050 False representation—Penalty. Any person making any false representation to a seller when purchasing a poison is guilty of a gross misdemeanor. [1987 c 34 § 5.]

69.38.060 Manufacturers and sellers of poisons—License required—Penalty. The state board of pharmacy, after consulting with the department of health, shall require and provide for the annual licensure of every person now or hereafter engaged in manufacturing or selling poisons within this state. Upon a payment of a fee as set by the department, the department shall issue a license in such form as it may prescribe to such manufacturer or seller. Such license shall be displayed in a conspicuous place in such manufacturer's or seller's place of business for which it is issued.

Any person manufacturing or selling poison within this state without a license is guilty of a misdemeanor. [1989 1st ex.s. c 9 § 440; 1987 c 34 § 6.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Chapter 69.40

POISONS AND DANGEROUS DRUGS

Sections

- 69.40.010 Poison in edible products.
- 69.40.015 Poison in edible products—Penalty.
- 69.40.020 Poison in milk or food products—Penalty.
- 69.40.025 Supplementary to existing laws—Enforcement.
- 69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty.
- 69.40.055 Selling repackaged poison without labeling—Penalty.

69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter.

Pharmacists: Chapter 18.64 RCW.

Poison information centers: Chapter 18.76 RCW.

Poisoning animals—Strychnine sales: RCW 16.52.190 through 16.52.195.

Washington pesticide application act: Chapter 17.21 RCW.

69.40.010 Poison in edible products. It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [1905 c 141 § 1; RRS § 6140. FORMER PART OF SECTION: 1905 c 141 § 2 now codified as RCW 69.40.015.]

69.40.015 Poison in edible products—Penalty. Any person violating the provisions of RCW 69.40.010 shall upon conviction be punished by a fine of not less than ten dollars nor more than five hundred dollars. [1905 c 141 § 2; RRS § 6141. Formerly RCW 69.40.010, part.]

69.40.020 Poison in milk or food products—Penalty. Any person who shall sell, offer to sell, or have in his possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years. [1905 c 50 § 1; RRS § 6142. FORMER PART OF SECTION: 1905 c 50 § 2, now codified as RCW 69.40.025.]

69.40.025 Supplementary to existing laws—Enforcement. *This act shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in the sale thereof; and the state dairy and food commissioner, the chemist of the state agricultural experiment station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of *this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [1905 c 50 § 2; RRS § 6143. Formerly RCW 69.40.020, part.]

Reviser's note: *(1) "This act" appears in 1905 c 50 and the sections of the act are codified as RCW 69.40.020 and 69.40.025.

(2) The duties of the state dairy and food commissioner have devolved upon the director of agriculture through a chain of statute as follows: 1913 c 60 § 6(2); 1921 c 7 § 93(1). See RCW 43.23.090(1).

69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty. Every person who willfully mingles poison or place[s] any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any

food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink, medicine, or other edible substance containing such poison or harmful object or substance to another human being, and every person who willfully poisons any spring, well, or reservoir of water, shall be punished by imprisonment in a state correctional facility for not less than five years or by a fine of not less than one thousand dollars: PROVIDED, HOWEVER, That *this act shall not apply to the employer or employers of a person who violates the provisions contained herein without such employer's knowledge. [1992 c 7 § 48; 1973 c 119 § 1; 1909 c 249 § 264; RRS § 2516. Prior: Code 1881 § 802; 1873 p 185 § 27; 1869 p 202 § 25; 1854 p 79 § 25.]

***Reviser's note:** "this act" refers to the 1973 c 119 § 1 amendment to this section.

69.40.055 Selling repackaged poison without labeling—Penalty. It shall be unlawful for any person to sell at retail or furnish any repackaged poison drug or product without affixing or causing to be affixed to the bottle, box, vessel, or package a label containing the name of the article, all labeling required by the Food and Drug Administration and other federal or state laws or regulations, and the word "poison" distinctly shown with the name and place of the business of the seller.

This section shall not apply to the dispensing of drugs or poisons on the prescription of a practitioner.

The board of pharmacy shall have the authority to promulgate rules for the enforcement and implementation of this section.

Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1981 c 147 § 4.]

69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter. See RCW 43.43.610.

Chapter 69.41

LEGEND DRUGS—PRESCRIPTION DRUGS

Sections

69.41.010	Definitions.
69.41.020	Prohibited acts—Information not privileged communication.
69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions.
69.41.032	Prescription of legend drugs by dialysis programs.
69.41.040	Prescription requirements.
69.41.042	Record requirements.
69.41.044	Confidentiality.
69.41.050	Labeling requirements.
69.41.055	Electronic communication of prescription information—Board may adopt rules.
69.41.060	Search and seizure.
69.41.062	Search and seizure at rental premises—Notification of landlord.
69.41.065	Violations—Juvenile driving privileges.
69.41.070	Penalties.
69.41.075	Rules—Availability of lists of drugs.
69.41.080	Animal control—Rules for possession and use of legend drugs.
69.41.085	Medication assistance—Community-based setting.

SUBSTITUTION OF PRESCRIPTION DRUGS

- 69.41.100 Legislative recognition and declaration.
- 69.41.110 Definitions.
- 69.41.120 Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure.
- 69.41.130 Savings in price to be passed on to purchaser.
- 69.41.140 Minimum manufacturing standards and practices.
- 69.41.150 Liability of practitioner, pharmacist.
- 69.41.160 Pharmacy signs as to substitution for prescribed drugs.
- 69.41.170 Coercion of pharmacist prohibited—Penalty.
- 69.41.180 Rules.

IDENTIFICATION OF LEGEND DRUGS—MARKING

- 69.41.200 Requirements for identification of legend drugs—Marking.
- 69.41.210 Definitions.
- 69.41.220 Published lists of drug imprints—Requirements for.
- 69.41.230 Drugs in violation are contraband.
- 69.41.240 Rules—Labeling and marking.
- 69.41.250 Exemptions.
- 69.41.260 Manufacture or distribution for resale—Requirements.
- 69.41.270 Maintenance of records—Inspection by board.
- 69.41.280 Confidentiality of records.

USE OF STEROIDS

- 69.41.300 Definitions.
- 69.41.310 Rules.
- 69.41.320 Practitioners—Restricted use—Medical records.
- 69.41.330 Public warnings—School districts.
- 69.41.340 Student athletes—Violations—Penalty.
- 69.41.900 Severability—1979 c 110.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

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

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

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

(4) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(5) "Dispenser" means a practitioner who dispenses.

(6) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(7) "Distributor" means a person who distributes.

(8) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(9) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(10) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(11) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based setting specified in RCW 69.41.085 to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. The nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined, in consultation with the individual or the individual's representative, that such medication assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications.

(12) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(13) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, or a pharmacist under chapter 18.64 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic

medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(14) "Secretary" means the secretary of health or the secretary's designee. [1998 c 222 § 1; 1998 c 70 § 2; 1996 c 178 § 16; 1994 sp.s. c 9 § 736. Prior: 1989 1st ex.s. c 9 § 426; 1989 c 36 § 3; 1984 c 153 § 17; 1980 c 71 § 1; 1979 ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

Reviser's note: This section was amended by 1998 c 70 § 2 and by 1998 c 222 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1996 c 178: See note following RCW 18.35.110.

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

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.020 Prohibited acts—Information not privileged communication. Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

- (a) By fraud, deceit, misrepresentation, or subterfuge; or
- (b) By the forgery or alteration of a prescription or of any written order; or
- (c) By the concealment of a material fact; or
- (d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs.

(7) No person shall willfully fail to maintain the records required by RCW 69.41.042 and 69.41.270. [1989 1st ex.s. c 9 § 408; 1989 c 352 § 8; 1973 1st ex.s. c 186 § 2.]

Reviser's note: This section was amended by 1989 c 352 § 8 and by 1989 1st ex.s. c 9 § 408, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions. It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical

or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners. [1996 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

Effective date—1996 c 178: See note following RCW 18.35.110.

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

Finding—1990 c 219: "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

69.41.032 Prescription of legend drugs by dialysis programs. This chapter shall not prevent a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program from selling, delivering, possessing, or dispensing directly to its dialysis patients, in case or full shelf lots, if prescribed by a physician licensed under chapter 18.57 or 18.71 RCW, those legend drugs determined by the board pursuant to rule. [1987 c 41 § 2.]

Application of pharmacy statutes to dialysis programs: RCW 18.64.257.

69.41.040 Prescription requirements. A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who

knows or should know that he is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university. [1973 1st ex.s. c 186 § 4.]

69.41.042 Record requirements. A pharmaceutical manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs shall maintain invoices or such other records as are necessary to account for the receipt and disposition of the legend drugs.

The records maintained pursuant to this section shall be available for inspection by the board and its authorized representatives and shall be maintained for two years. [1989 1st ex.s. c 9 § 405.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.044 Confidentiality. All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.17 RCW. [1989 1st ex.s. c 9 § 406.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.050 Labeling requirements. To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug either by the brand or generic name and strength per unit dose, name of patient and date: PROVIDED, That the practitioner may omit the name and dosage of the drug if he determines that his patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient. [1980 c 83 § 8; 1973 1st ex.s. c 186 § 5.]

69.41.055 Electronic communication of prescription information—Board may adopt rules. (1) Information concerning an original prescription or information concerning a prescription refill for a legend drug may be electronically communicated between an authorized practitioner and a pharmacy of the patient's choice with no intervening person having access to the prescription drug order pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section. [1998 c 222 § 2.]

69.41.060 Search and seizure. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior or district court that there is probable cause to believe that any legend drug is being used, manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any peace officer in the county, commanding the peace officer to search the premises designated and described in such complaint and warrant, and to seize all legend drugs there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing or otherwise disposing of such legend drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such legend drugs, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted

on the door of the building or room wherein the same are found, or, if there be no door, then in any conspicuous place upon the premises. [1987 c 202 § 227; 1973 1st ex.s. c 186 § 6.]

Intent—1987 c 202: See note following RCW 2.04.190.

69.41.062 Search and seizure at rental premises—Notification of landlord. Whenever a legend drug which is sold, delivered, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.41.065 Violations—Juvenile driving privileges.

(1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 119; 1988 c 148 § 4.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.41.070 Penalties. Whoever violates any provision of this chapter shall, upon conviction, be fined and imprisoned as herein provided:

(1) For a violation of RCW 69.41.020, the offender shall be guilty of a felony.

(2) For a violation of RCW 69.41.030 involving the sale, delivery, or possession with intent to sell or deliver, the offender shall be guilty of a felony.

(3) For a violation of RCW 69.41.030 involving possession, the offender shall be guilty of a misdemeanor.

(4) For a violation of RCW 69.41.040, the offender shall be guilty of a felony.

(5) For a violation of RCW 69.41.050, the offender shall be guilty of a misdemeanor.

(6) Any offense which is a violation of chapter 69.50 RCW other than RCW 69.50.401(c) shall not be charged under this chapter.

(7) For a violation of RCW 69.41.320(1), the offender shall be guilty of a gross misdemeanor and subject to disciplinary action under RCW 18.130.180.

(8)(a) A person who violates the provisions of this chapter by possessing under two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a gross misdemeanor.

(b) A person who violates the provisions of this chapter by possessing over two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a class C felony and shall be punished according to *RCW 9A.20.010(1)(c). [1989 c 369 § 4; 1983 1st ex.s. c 4 § 4; 1973 1st ex.s. c 186 § 7.]

***Reviser's note:** The reference to RCW 9A.20.010(1)(c) is erroneous. The section governing the maximum sentence for a class C felony is RCW 9A.20.021(1)(c).

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

69.41.075 Rules—Availability of lists of drugs. The state board of pharmacy may make such rules for the enforcement of this chapter as are deemed necessary or advisable. The board shall identify, by rule-making pursuant to chapter 34.05 RCW, those drugs which may be dispensed only on prescription or are restricted to use by practitioners, only. In so doing the board shall consider the toxicity or other potentiality for harmful effect of the drug, the method of its use, and any collateral safeguards necessary to its use. The board shall classify a drug as a legend drug where these considerations indicate the drug is not safe for use except under the supervision of a practitioner.

In identifying legend drugs the board may incorporate in its rules lists of drugs contained in commercial pharmaceutical publications by making specific reference to each such list and the date and edition of the commercial publication containing it. Any such lists so incorporated shall be available for public inspection at the headquarters of the department of health and shall be available on request from the department of health upon payment of a reasonable fee to be set by the department. [1989 1st ex.s. c 9 § 427; 1979 ex.s. c 139 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.080 Animal control—Rules for possession and use of legend drugs. Humane societies and animal control agencies registered with the state board of pharmacy under chapter 69.50 RCW and authorized to euthanize animals may purchase, possess, and administer approved legend drugs for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs. For the purposes of this section, "approved legend drugs" means those legend drugs designated by the board by rule as being approved for use by such societies and agencies for animal sedating or capture and does not include any substance regulated under chapter 69.50 RCW. Any society or agency so registered shall not permit persons to administer any legend drugs unless such person has demonstrated to the satisfaction of the board adequate knowledge of the potential

hazards involved in and the proper techniques to be used in administering the drugs.

The board shall promulgate rules to regulate the purchase, possession, and administration of legend drugs by such societies and agencies and to insure strict compliance with the provisions of this section. Such rules shall require that the storage, inventory control, administration, and recordkeeping for approved legend drugs conform to the standards adopted by the board under chapter 69.50 RCW to regulate the use of controlled substances by such societies and agencies. The board may suspend or revoke a registration under chapter 69.50 RCW upon a determination by the board that the person administering legend drugs has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke a registration as provided by law. [1989 c 242 § 1.]

69.41.085 Medication assistance—Community-based setting. Individuals residing in community-based settings, such as adult family homes, boarding homes, and residential care settings for the developmentally disabled, including an individual's home, might need medication assistance due to physical or mental limitations that prevent them from self-administering their legend drugs or controlled substances. The practitioner in consultation with the individual or his or her representative and the community-based setting, if involved, determines that medication assistance is appropriate for this individual. Medication assistance can take different forms such as opening containers, handing the container or medication to the individual, preparing the medication with prior authorization, using enablers for facilitating the self-administration of medication, and other means of assisting in the administration of legend drugs or controlled substances commonly employed in community-based settings. Nothing in this chapter affects the right of an individual to refuse medication or requirements relating to informed consent. [1998 c 70 § 1.]

SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100 Legislative recognition and declaration. The legislature recognizes the responsibility of the state to insure that the citizens of the state are offered a choice between generic drugs and brand name drugs and the benefit of quality pharmaceutical products at competitive prices. Advances in the drug industry resulting from research and the elimination of counterfeiting of prescription drugs should benefit the users of the drugs. Pharmacy must continue to operate with accountability and effectiveness. The legislature hereby declares it to be the policy of the state that its citizens receive safe and therapeutically effective drug products at the most reasonable cost consistent with high drug quality standards. [1986 c 52 § 1; 1977 ex.s. c 352 § 1.]

Severability—1977 ex.s. c 352: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 352 § 10.] This applies to RCW 69.41.100 through 69.41.180.

69.41.110 Definitions. As used in RCW 69.41.100 through 69.41.180, the following words shall have the following meanings:

(1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label, or wrapping at the time of packaging;

(2) "Generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) "Substitute" means to dispense, with the practitioner's authorization, a "therapeutically equivalent" drug product of the identical base or salt as the specific drug product prescribed: PROVIDED, That with the practitioner's prior consent, therapeutically equivalent drugs other than the identical base or salt may be dispensed;

(4) "Therapeutically equivalent" means essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen; and

(5) "Practitioner" means a physician, osteopathic physician and surgeon, dentist, veterinarian, or any other person authorized to prescribe drugs under the laws of this state. [1979 c 110 § 1; 1977 ex.s. c 352 § 2.]

69.41.120 Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure. Every drug prescription shall contain an instruction on whether or not a therapeutically equivalent generic drug may be substituted in its place, unless substitution is permitted under a prior-consent authorization.

If a written prescription is involved, the form shall have two signature lines at opposite ends on the bottom of the form. Under the line at the right side shall be clearly printed the words "DISPENSE AS WRITTEN". Under the line at the left side shall be clearly printed the words "SUBSTITUTION PERMITTED". The practitioner shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the practitioner on one of these lines. In the case of a prescription issued by a practitioner in another state that uses a one-line prescription form or variation thereof, the pharmacist may substitute a therapeutically equivalent generic drug unless otherwise instructed by the practitioner through the use of the words "dispense as written", words of similar meaning, or some other indication.

If an oral prescription is involved, the practitioner or the practitioner's agent shall instruct the pharmacist as to whether or not a therapeutically equivalent generic drug may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription.

The pharmacist shall note the manufacturer of the drug dispensed on the file copy of a written or oral prescription. [1990 c 218 § 1; 1979 c 110 § 2; 1977 ex.s. c 352 § 3.]

69.41.130 Savings in price to be passed on to purchaser. Unless the brand name drug is requested by the patient or the patient's representative, the pharmacist shall substitute an equivalent drug product which he has in stock if its wholesale price to the pharmacist is less than the wholesale price of the prescribed drug product, and at least

sixty percent of the savings shall be passed on to the purchaser. [1986 c 52 § 2; 1979 c 110 § 3; 1977 ex.s. c 352 § 4.]

69.41.140 Minimum manufacturing standards and practices. A pharmacist may not substitute a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices:

- (1) Maintain quality control standards equal to those of the Food and Drug Administration;
- (2) Comply with regulations promulgated by the Food and Drug Administration. [1979 c 110 § 4; 1977 ex.s. c 352 § 5.]

69.41.150 Liability of practitioner, pharmacist. (1) A practitioner who authorizes a prescribed drug shall not be liable for any side effects or adverse reactions caused by the manner or method by which a substituted drug product is selected or dispensed.

(2) A pharmacist who substitutes an equivalent drug product pursuant to RCW 69.41.100 through 69.41.180 as now or hereafter amended assumes no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its established name. [1979 c 110 § 5; 1977 ex.s. c 352 § 6.]

69.41.160 Pharmacy signs as to substitution for prescribed drugs. Every pharmacy shall post a sign in a location at the prescription counter that is readily visible to patrons stating, "Under Washington law, an equivalent but less expensive drug may in some cases be substituted for the drug prescribed by your doctor. Such substitution, however, may only be made with the consent of your doctor. Please consult your pharmacist or physician for more information." [1979 c 110 § 6; 1977 ex.s. c 352 § 7.]

69.41.170 Coercion of pharmacist prohibited—Penalty. It shall be unlawful for any employer to coerce, within the meaning of RCW 9A.36.070, any pharmacist to dispense a generic drug or to substitute a generic drug for another drug. A violation of this section shall be punishable as a misdemeanor. [1977 ex.s. c 352 § 8.]

69.41.180 Rules. The state board of pharmacy may adopt any necessary rules under chapter 34.05 RCW for the implementation, continuation, or enforcement of RCW 69.41.100 through 69.41.180, including, but not limited to, a list of therapeutically or nontherapeutically equivalent drugs which, when adopted, shall be provided to all registered pharmacists in the state and shall be updated as necessary. [1979 c 110 § 7; 1977 ex.s. c 352 § 9.]

IDENTIFICATION OF LEGEND DRUGS—MARKING

69.41.200 Requirements for identification of legend drugs—Marking. (1) No legend drug in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters,

marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(2) No manufacturer or distributor may sell any legend drug contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(3) Whenever the distributor of a legend drug does not also manufacture it, the names and places of businesses of both shall appear on the stock container or package label in words that truly distinguish each. [1980 c 83 § 1.]

69.41.210 Definitions. The terms defined in this section shall have the meanings indicated when used in RCW 69.41.200 through 69.41.260.

(1) "Distributor" means any corporation, person, or other entity which distributes for sale a legend drug under its own label even though it is not the actual manufacturer of the legend drug.

(2) "Solid dosage form" means capsules or tablets or similar legend drug products intended for administration and which could be ingested orally.

(3) "Legend drug" means any drugs which are required by state law or regulation of the board to be dispensed as prescription only or are restricted to use by prescribing practitioners only and shall include controlled substances in Schedules II through V of chapter 69.50 RCW.

(4) "Board" means the state board of pharmacy. [1980 c 83 § 2.]

69.41.220 Published lists of drug imprints—Requirements for. Each manufacturer and distributor shall publish and provide to the board by filing with the department printed material which will identify each current imprint used by the manufacturer or distributor. The board shall be notified of any change by the filing of any change with the department. This information shall be provided by the department to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 1st ex.s. c 9 § 428; 1980 c 83 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.230 Drugs in violation are contraband. Any legend drug prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure under the provisions of RCW 69.41.060. [1980 c 83 § 4.]

69.41.240 Rules—Labeling and marking. The board shall have authority to promulgate rules and regulations for the enforcement and implementation of RCW 69.41.050 and 69.41.200 through 69.41.260. [1980 c 83 § 5.]

69.41.250 Exemptions. (1) The board, upon application of a manufacturer, may exempt a particular legend drug

from the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics.

(2) The provisions of RCW 69.41.050 and 69.41.200 through 69.41.260 shall not apply to any legend drug which is prepared or manufactured by a pharmacy in this state and is for the purpose of retail sale from such pharmacy and not intended for resale. [1980 c 83 § 6.]

69.41.260 Manufacture or distribution for resale—Requirements. All legend drugs manufactured or distributed for resale to any entity in this state other than the ultimate consumer shall meet the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 from a date eighteen months after June 12, 1980. [1980 c 83 § 7.]

69.41.270 Maintenance of records—Inspection by board. A pharmaceutical manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs shall maintain invoices or such other records as are necessary to account for the receipt and disposition of the legend drugs.

The records maintained pursuant to this section shall be available for inspection by the board and its authorized representatives and shall be maintained for two years. [1989 c 352 § 5.]

69.41.280 Confidentiality of records. All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.17 RCW. [1989 c 352 § 6.]

USE OF STEROIDS

69.41.300 Definitions. For the purposes of RCW 69.41.070 and 69.41.300 through 69.41.340, "steroids" shall include the following:

(1) "Anabolic steroids" means synthetic derivatives of testosterone or any isomer, ester, salt, or derivative that act in the same manner on the human body;

(2) "Androgens" means testosterone in one of its forms or a derivative, isomer, ester, or salt, that act in the same manner on the human body; and

(3) "Human growth hormones" means growth hormones, or a derivative, isomer, ester, or salt that act in the same manner on the human body. [1989 c 369 § 1.]

69.41.310 Rules. The state board of pharmacy shall specify by rule drugs to be classified as steroids as defined in RCW 69.41.300.

On or before December 1 of each year, the board shall inform the appropriate legislative committees of reference of the drugs that the board has added to the steroids in RCW

69.41.300. The board shall submit a statement of rationale for the changes. [1989 c 369 § 2.]

69.41.320 Practitioners—Restricted use—Medical records. (1) A practitioner shall not prescribe, administer, or dispense steroids, as defined in RCW 69.41.300, or any form of autotransfusion for the purpose of manipulating hormones to increase muscle mass, strength, or weight, or for the purpose of enhancing athletic ability, without a medical necessity to do so.

(2) A practitioner shall complete and maintain patient medical records which accurately reflect the prescribing, administering, or dispensing of any substance or drug described in this section or any form of autotransfusion. Patient medical records shall indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is prescribed, administered, or dispensed and any additional information upon which the diagnosis is based. [1989 c 369 § 3.]

69.41.330 Public warnings—School districts. The superintendent of public instruction shall develop and distribute to all school districts signs of appropriate design and dimensions advising students of the health risks that steroids present when used solely to enhance athletic ability, and of the penalties for their unlawful possession provided by RCW 69.41.070 and 69.41.300 through 69.41.340.

School districts shall post or cause the signs to be posted in a prominent place for ease of viewing on the premises of school athletic departments. [1989 c 369 § 5.]

69.41.340 Student athletes—Violations—Penalty. The superintendent of public instruction, in consultation with the Washington interscholastic activity association, shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. The regents or trustees of each institution of higher education shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. [1989 c 369 § 6.]

69.41.900 Severability—1979 c 110. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 110 § 8.]

Chapter 69.43

PRECURSOR DRUGS

Sections

69.43.010	Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties.
69.43.020	Receipt of substance from source outside state—Report—Penalty.
69.43.030	Exemptions.
69.43.040	Reporting form.
69.43.050	Rules.
69.43.060	Theft—Missing quantity—Reporting.

- 69.43.070 Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony.
- 69.43.080 False statement in report or record—Class C felony.
- 69.43.090 Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty.
- 69.43.100 Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit.

69.43.010 Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties. (1) Beginning July 1, 1988, a report to the state board of pharmacy shall be submitted in accordance with this chapter by a manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes to any person in this state any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chlorophedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;
- (u) Piperidine;
- (v) Pseudoephedrine; and
- (w) Pyrrolidine.

(2) The state board of pharmacy shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the board shall consider the following:

- (a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;
- (b) The availability of the substance;
- (c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and
- (d) The extent and nature of legitimate uses for the substance.

(3)(a) Beginning on July 1, 1988, any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to a person in this state, require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means, in the case of a face-to-face purchase, a motor vehicle operator's license or other official state-issued

identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of any motor vehicle owned or operated by the purchaser, a letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business, a description of how the substance is to be used, and the signature of the purchaser. The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser. The state board of pharmacy shall provide by rule for the proper identification of purchasers in other than face-to-face purchases.

(c) A violation of this subsection is a misdemeanor.

(4) Beginning on July 1, 1988, any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to a person in this state shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which includes the identification information specified in subsection (3) of this section to the state board of pharmacy. However, the state board of pharmacy may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the state board of pharmacy determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

(5) Any person specified in subsection (4) of this section who does not submit a report as required by that subsection is guilty of a gross misdemeanor. [1998 c 245 § 107; 1988 c 147 § 1.]

69.43.020 Receipt of substance from source outside state—Report—Penalty. (1) Beginning on July 1, 1988, any manufacturer, wholesaler, retailer, or other person subject to any other reporting requirements in this chapter, who receives from a source outside of this state any substance specified in RCW 69.43.010(1), shall submit a report of such transaction to the state board of pharmacy under rules adopted by the board.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor. [1988 c 147 § 2.]

69.43.030 Exemptions. RCW 69.43.010 and 69.43.020 do not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a practitioner, as defined in chapter 69.41 RCW;

(2) Any practitioner who administers or furnishes a substance to his or her patients;

(3) Any manufacturer or wholesaler licensed by the state board of pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy or practitioner;

(4) Any sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished, over the counter without a prescription under chapter 69.04 or 69.41 RCW. [1988 c 147 § 3.]

69.43.040 Reporting form. (1) The department of health, in accordance with rules developed by the state board of pharmacy shall provide a common reporting form for the substances in RCW 69.43.010 that contains at least the following information:

(a) Name of the substance;

(b) Quantity of the substance sold, transferred, or furnished;

(c) The date the substance was sold, transferred, or furnished;

(d) The name and address of the person buying or receiving the substance; and

(e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing the substance.

(2) Monthly reports authorized under subsection (1)(e) of this section may be computer-generated in accordance with rules adopted by the department. [1989 1st ex.s. c 9 § 441; 1988 c 147 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.050 Rules. (1) The state board of pharmacy may adopt all rules necessary to carry out this chapter.

(2) Notwithstanding subsection (1) of this section, the department of health may adopt rules necessary for the administration of this chapter. [1989 1st ex.s. c 9 § 442; 1988 c 147 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.060 Theft—Missing quantity—Reporting. (1) The theft or loss of any substance under RCW 69.43.010 discovered by any person regulated by this chapter shall be reported to the state board of pharmacy within seven days after such discovery.

(2) Any difference between the quantity of any substance under RCW 69.43.010 received and the quantity shipped shall be reported to the state board of pharmacy within seven days of the receipt of actual knowledge of the discrepancy. When applicable, any report made pursuant to this subsection shall also include the name of any common carrier or person who transported the substance and the date of shipment of the substance. [1988 c 147 § 6.]

69.43.070 Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony. (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance listed in RCW 69.43.010

with knowledge or the intent that the recipient will use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW.

(2) Any person who receives any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW. [1988 c 147 § 7.]

69.43.080 False statement in report or record—Class C felony. It is unlawful for any person knowingly to make a false statement in connection with any report or record required under this chapter. A violation of this section is a class C felony under chapter 9A.20 RCW. [1988 c 147 § 8.]

69.43.090 Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty. (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010 to a person in this state or who receives from a source outside of the state any substance specified in RCW 69.43.010 shall obtain a permit for the conduct of that business from the state board of pharmacy. However, a permit shall not be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) Applications for permits shall be filed with the department in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(3) The board may grant permits on forms prescribed by it. The permits shall be effective for not more than one year from the date of issuance.

(4) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department.

(5) A permit granted under this chapter may be renewed on a date to be determined by the board, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee determined by the department.

(6) Permit fees charged by the department shall not exceed the costs incurred by the department in administering this chapter.

(7) Selling, transferring, or otherwise furnishing, or receiving any substance specified in RCW 69.43.010 without a required permit, is a gross misdemeanor. [1989 1st ex.s. c 9 § 443; 1988 c 147 § 9.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.100 Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit. The board shall have the power to refuse, suspend, or revoke the permit of any manufacturer or wholesaler upon proof that:

(1) The permit was procured through fraud, misrepresentation, or deceit;

(2) The permittee has violated or has permitted any employee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the board of pharmacy. [1988 c 147 § 10.]

Chapter 69.45 DRUG SAMPLES

Sections

69.45.010	Definitions.
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69.45.030	Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples.
69.45.040	Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates.
69.45.050	Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives.
69.45.060	Disposal of surplus, outdated, or damaged drug samples.
69.45.070	Registration fees—Penalty.
69.45.080	Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples.
69.45.090	Records, reports, and information confidential—Exemption from public inspection under chapter 42.17 RCW.
69.45.900	Severability—1987 c 411.

69.45.010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Board" means the board of pharmacy.

(2) "Drug samples" means any federal food and drug administration approved controlled substance, legend drug, or products requiring prescriptions in this state, which is distributed at no charge to a practitioner by a manufacturer or a manufacturer's representative, exclusive of drugs under clinical investigations approved by the federal food and drug administration.

(3) "Controlled substance" means a drug, substance, or immediate precursor of such drug or substance, so designated under or pursuant to chapter 69.50 RCW, the uniform controlled substances act.

(4) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(5) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Distribute" means to deliver, other than by administering or dispensing, a legend drug.

(7) "Legend drug" means any drug that is required by state law or by regulations of the board to be dispensed on prescription only or is restricted to use by practitioners only.

(8) "Manufacturer" means a person or other entity engaged in the manufacture or distribution of drugs or devices, but does not include a manufacturer's representative.

(9) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(10) "Practitioner" means a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a pharmacist under chapter 18.64 RCW, a commissioned medical or dental officer in the United States armed forces or the public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized to prescribe by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, or a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission.

(11) "Manufacturer's representative" means an agent or employee of a drug manufacturer who is authorized by the drug manufacturer to possess drug samples for the purpose of distribution in this state to appropriately authorized health care practitioners.

(12) "Reasonable cause" means a state of facts found to exist that would warrant a reasonably intelligent and prudent person to believe that a person has violated state or federal drug laws or regulations.

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

(14) "Secretary" means the secretary of health or the secretary's designee. [1994 sp.s. c 9 § 738; 1989 1st ex.s. c 9 § 444; 1987 c 411 § 1.]

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

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.020 Registration of manufacturers—Additional information required by the department. A manufacturer that intends to distribute drug samples in this state shall register annually with the department, providing the name and address of the manufacturer, and shall:

(1) Provide a twenty-four hour telephone number and the name of the individual(s) who shall respond to reasonable official inquiries from the department, as directed by the board, based on reasonable cause, regarding required records, reports, or requests for information pursuant to a specific investigation of a possible violation. Each official request by the department and each response by a manufacturer shall be limited to the information specifically relevant to the particular official investigation. Requests for the address of sites in this state at which drug samples are stored by the manufacturer's representative and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples shall be responded to as

soon as possible but not later than the close of business on the next business day following the request; or

(2) If a twenty-four hour telephone number is not available, provide the addresses of sites in this state at which drug samples are stored by the manufacturer's representative, and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples. The manufacturer shall annually submit a complete updated list of the sites and individuals to the department. [1989 1st ex.s. c 9 § 445; 1987 c 411 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.030 Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples.

(1) The following records shall be maintained by the manufacturer distributing drug samples in this state and shall be available for inspection by authorized representatives of the department based on reasonable cause and pursuant to an official investigation:

(a) An inventory of drug samples held in this state for distribution, taken at least annually by a representative of the manufacturer other than the individual in direct control of the drug samples;

(b) Records or documents to account for all drug samples distributed, destroyed, or returned to the manufacturer. The records shall include records for sample drugs signed for by practitioners, dates and methods of destruction, and any dates of returns; and

(c) Copies of all reports of lost or stolen drug samples.

(2) All required records shall be maintained for two years and shall include transaction dates.

(3) Manufacturers shall report to the department the discovery of any loss or theft of drug samples as soon as possible but not later than the close of business on the next business day following the discovery.

(4) Manufacturers shall report to the department as frequently as, and at the same time as, their other reports to the federal drug enforcement administration, or its lawful successor, the name, address and federal registration number for each practitioner who has received controlled substance drug samples and the name, strength and quantity of the controlled substance drug samples distributed. [1989 1st ex.s. c 9 § 446; 1987 c 411 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.040 Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates. (1) Drug samples shall be stored in compliance with the requirements of federal and state laws, rules, and regulations.

(2) Drug samples shall be maintained in a locked area to which access is limited to persons authorized by the manufacturer.

(3) Drug samples shall be stored and transported in such a manner as to be free of contamination, deterioration, and adulteration.

(4) Drug samples shall be stored under conditions of temperature, light, moisture, and ventilation so as to meet the label instructions for each drug.

(5) Drug samples which have exceeded the expiration date shall be physically separated from other drug samples until disposed of or returned to the manufacturer. [1987 c 411 § 4.]

69.45.050 Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives.

(1) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to practitioners legally authorized to prescribe such drugs or, at the request of such practitioner, to pharmacies of hospitals or other health care entities. The recipient of the drug sample must execute a written receipt upon delivery that is returned to the manufacturer or the manufacturer's representative.

(2) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to a practitioner legally authorized to prescribe such drugs pursuant to a written request for such samples. The request shall contain:

(a) The recipient's name, address, and professional designation;

(b) The name, strength, and quantity of the drug samples delivered;

(c) The name or identification of the manufacturer and of the individual distributing the drug sample; and

(d) The dated signature of the practitioner requesting the drug sample.

(3) No fee or charge may be imposed for sample drugs distributed in this state.

(4) A manufacturer's representative shall not possess legend drugs or controlled substances other than those distributed by the manufacturer they represent. Nothing in this section prevents a manufacturer's representative from possessing a legally prescribed and dispensed legend drug or controlled substance. [1989 c 164 § 2; 1987 c 411 § 5.]

Legislative finding—1989 c 164: "The legislature finds that chapter 69.45 RCW is more restrictive than the federal prescription drug marketing act of 1987, and the legislature further finds that a change in chapter 69.45 RCW accepting the position of the federal law is beneficial to the citizens of this state." [1989 c 164 § 1.]

69.45.060 Disposal of surplus, outdated, or damaged drug samples. Surplus, outdated, or damaged drug samples shall be disposed of as follows:

(1) Returned to the manufacturer; or

(2) Witnessed destruction by such means as to assure that the drug cannot be retrieved. However, controlled substances shall be returned to the manufacturer or disposed of in accordance with rules adopted by the board: PROVIDED, That the board shall adopt by rule the regulations of the federal drug enforcement administration or its lawful successor unless, stating reasonable grounds, it adopts rules consistent with such regulations. [1987 c 411 § 6.]

69.45.070 Registration fees—Penalty. The department may charge reasonable fees for registration. The registration fee shall not exceed the fee charged by the department for a pharmacy location license. If the registration

fee is not paid on or before the date due, a renewal or new registration may be issued only upon payment of the registration renewal fee and a penalty fee equal to the registration renewal fee. [1991 c 229 § 8; 1989 1st ex.s. c 9 § 447; 1987 c 411 § 7.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.080 Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples. (1) The manufacturer is responsible for the actions and conduct of its representatives with regard to drug samples.

(2) The board may hold a public hearing to examine a possible violation and may require a designated representative of the manufacturer to attend.

(3) If a manufacturer fails to comply with this chapter following notification by the board, the board may impose a civil penalty of up to five thousand dollars. The board shall take no action to impose any civil penalty except pursuant to a hearing held in accordance with chapter 34.05 RCW.

(4) Specific drug samples which are distributed in this state in violation of this chapter, following notification by the board, shall be subject to seizure following the procedures set out in RCW 69.41.060. [1987 c 411 § 8.]

69.45.090 Records, reports, and information confidential—Exemption from public inspection under chapter 42.17 RCW. All records, reports, and information obtained by the board from or on behalf of a manufacturer or manufacturer's representative under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. This section does not apply to public disclosure of the identity of persons found by the board to have violated state or federal law, rules, or regulations. This section is not intended to restrict the investigations and proceedings of the board so long as the board maintains the confidentiality required by this section. [1987 c 411 § 9.]

69.45.900 Severability—1987 c 411. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 411 § 12.]

Chapter 69.50

UNIFORM CONTROLLED SUBSTANCES ACT

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ARTICLE I DEFINITIONS

69.50.101 Definitions. Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

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

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a)(12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a)(8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every

compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, a

pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

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

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy. [1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1. Prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Effective date—1996 c 178: See note following RCW 18.35.110.

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

Finding—1990 c 219: See note following RCW 69.41.030.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [1973 2nd ex.s. c 38 § 3.]

69.50.102 Drug paraphernalia—Definitions. (a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs; and

(xiii) Ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use. [1981 c 48 § 1.]

Severability—1981 c 48: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 48 § 4.]

ARTICLE II STANDARDS AND SCHEDULES

69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances. (a) The state board of pharmacy shall enforce this chapter and may add substances to or delete or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the board shall consider the following:

(i) the actual or relative potential for abuse;

(ii) the scientific evidence of its pharmacological effect, if known;

(iii) the state of current scientific knowledge regarding the substance;

(iv) the history and current pattern of abuse;

(v) the scope, duration, and significance of abuse;

(vi) the risk to the public health;

(vii) the potential of the substance to produce psychic or physiological dependence liability; and

(viii) whether the substance is an immediate precursor of a controlled substance.

(2) The board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

(b) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for abuse.

(c) The board, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsections (a) and (b) of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule. If the board designates a substance as an immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(d) If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the board shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty-day period, the board or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the board shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the board shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the board, the board shall publish notice of the receipt of the objection, and control under this chapter is stayed until the board adopts a rule as provided by subsection (a) of this section.

(e) The board, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not

included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.214, the board shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1)(iv), (v), and (vi) of this section, and may also consider clandestine importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the board initiates a rule-making proceeding under subsection (a) of this section with respect to the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule-making proceeding initiated under subsection (a) of this section with respect to the substance.

(g) [(f)] Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Titles 66 and 26 RCW. [1998 c 245 § 108; 1993 c 187 § 2; 1989 1st ex.s. c 9 § 430; 1986 c 124 § 2; 1971 ex.s. c 308 § 69.50.201.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.202 Nomenclature. The controlled substances listed or to be listed in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 are included by whatever official, common, usual, chemical, or trade name designated. [1971 ex.s. c 308 § 69.50.202.]

69.50.203 Schedule I tests. (a) The state board of pharmacy shall place a substance in Schedule I upon finding that the substance:

(1) has high potential for abuse;

(2) has no currently accepted medical use in treatment in the United States; and

(3) lacks accepted safety for use in treatment under medical supervision.

(b) The board may place a substance in Schedule I without making the findings required by subsection (a) of this section if the substance is controlled under Schedule I of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 3; 1971 ex.s. c 308 § 69.50.203.]

69.50.204 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule I:

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol;
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide); (1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl some trade or other names: N-[1-(2-hydrox-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxidine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacylmorphin;
- (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylprop anamide);
- (35) 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;

- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (54) Tilidine;
- (55) Trimeperidine.

(b) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) 3,4-methylenedioxy-N-ethylamphetamine some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;
- (9) N-hydroxy-3,4-methylenedioxyamphetamine some trade or other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;
- (10) Dihydromorphine;
- (11) Drotebanol;
- (12) Etorphine, except hydrochloride salt;
- (13) Heroin;
- (14) Hydromorphanol;
- (15) Methyldesorphine;
- (16) Methyldihydromorphine;
- (17) Morphine methylbromide;
- (18) Morphine methylsulfonate;
- (19) Morphine-N-Oxide;
- (20) Myrophine;
- (21) Nicocodeine;
- (22) Nicomorphine;
- (23) Normorphine;
- (24) Pholcodine;
- (25) Thebacon.

(c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation.

- (1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;
- (2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;
- (3) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;
- (4) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (5) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";
- (6) 3,4-methylenedioxy amphetamine;
- (7) 3,4-methylenedioxy-methamphetamine (MDMA);
- (8) 3,4,5-trimethoxy amphetamine;

(9) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(10) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(11) Dimethyltryptamine: Some trade or other names: DMT;

(12) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2' 1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(13) Lysergic acid diethylamide;

(14) Marihuana or marijuana;

(15) Mescaline;

(16) Parahexyl-7374: Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(17) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 U.S.C. Sec. 812 (c), Schedule I (c)(12));

(18) N-ethyl-3-piperidyl benzilate;

(19) N-methyl-3-piperidyl benzilate;

(20) Psilocybin;

(21) Psilocyn;

(22) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, species, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4 - cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(23) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE;

(24) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

(25) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-thienyl]-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP;

(26) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine: A trade or other name is TCPy.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers

whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) Mecloqualone;

(2) Methaqualone.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) (+)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(3) N-ethylamphetamine;

(4) N,N-dimethylamphetamine: Some trade or other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenoethylene.

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 4; 1986 c 124 § 3; 1980 c 138 § 1; 1971 ex.s. c 308 § 69.50.204.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.205 Schedule II tests. (a) The state board of pharmacy shall place a substance in Schedule II upon finding that:

(1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychological or physical dependence.

(b) The state board of pharmacy may place a substance in Schedule II without making the findings required by subsection (a) of this section if the substance is controlled under Schedule II of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 5; 1971 ex.s. c 308 § 69.50.205.]

69.50.206 Schedule II. (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid;

(iv) Powdered opium;

(v) Granulated opium;

- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine hydrochloride;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subsection (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves including cocaine and ecgonine, and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(5) Methylbenzoyllecgonine (cocaine — its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following synthetic opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextroprorphan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levomethorphan;
- (12) Levorphanol;
- (13) Metazocine;
- (14) Methadone;

(15) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(16) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(17) Pethidine (meperidine);

(18) Pethidine—Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(19) Pethidine—Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(20) Pethidine—Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

- (21) Phenazocine;
- (22) Piminodine;
- (23) Racemethorphan;
- (24) Racemorphan;
- (25) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers, and salts of its isomers;

(3) Phenmetrazine and its salts;

(4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine;

(5) Secobarbital.

(f) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product. (Some other names for dronabinol [6aR-trans]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-i-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.)

(2) Nabilone: Some trade or other names are (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 6; 1986 c 124 § 4; 1980 c 138 § 2; 1971 ex.s. c 308 § 69.50.206.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.207 Schedule III tests. (a) The state board of pharmacy shall place a substance in Schedule III upon finding that:

(1) the substance has a potential for abuse less than the substances included in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) The state board of pharmacy may place a substance in Schedule III without making the findings required by subsection (a) of this section if the substance is controlled under Schedule III of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 7; 1971 ex.s. c 308 § 69.50.207.]

69.50.208 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule III:

(a) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Any compound, mixture, or preparation in dosage unit form containing any stimulant substance included in Schedule II and which was listed as an excepted compound on August 25, 1971, pursuant to the federal Controlled Substances Act, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except for containing a lesser quantity of controlled substances;

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing:
 - (i) Amobarbital;
 - (ii) Secobarbital;
 - (iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

- (2) Any suppository dosage form containing:
 - (i) Amobarbital;
 - (ii) Secobarbital;
 - (iii) Pentobarbital;

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

- (4) Chlorhexadol;
- (5) Lysergic acid;
- (6) Lysergic acid amide;
- (7) Methyprylon;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;

(10) Sulfonmethane;

(11) Tiletamine and zolazepam or any of their salts—some trade or other names for a tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]- diazepin-7(1H)-one flupyzapon.

(c) Nalorphine.

(d) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Chlorotestosterone;
- (3) Clostebol;
- (4) Dehydrochlormethyltestosterone;
- (5) Dihydrotestosterone;
- (6) Drostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone;
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nanrolone [nandrolone];
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenbolone; and

(28) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (a)(1) and (2) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a stimulant or depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 8; 1986 c 124 § 5; 1980 c 138 § 3; 1971 ex.s. c 308 § 69.50.208.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.209 Schedule IV tests. (a) The state board of pharmacy shall place a substance in Schedule IV upon finding that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule III.

(b) The state board of pharmacy may place a substance in Schedule IV without making the findings required by subsection (a) of this section if the substance is controlled under Schedule IV of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 9; 1971 ex.s. c 308 § 69.50.209.]

69.50.210 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule IV:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Estazolam;

(16) Ethchlorvynol;

(17) Ethinamate;

(18) Ethyl loflazepate;

(19) Fludiazepam;

(20) Flunitrazepam;

(21) Flurazepam;

(22) Halazepam;

(23) Haloxazolam;

(24) Ketazolam;

(25) Loprazolam;

(26) Lorazepam;

(27) Lormetazepam;

(28) Mebutamate;

(29) Medazepam;

(30) Meprobamate;

(31) Methohexital;

(32) Methylphenobarbital (mephobarbital);

(33) Midazolam;

(34) Nimetazepam;

(35) Nitrazepam;

(36) Nordiazepam;

(37) Oxazepam;

(38) Oxazolam;

(39) Paraldehyde;

(40) Petrichloral;

(41) Phenobarbital;

(42) Pinazepam;

(43) Prazepam;

- (44) Quazepam;
- (45) Temazepam;
- (46) Tetrazepam;
- (47) Triazolam.

(c) Any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

- (1) Cathine((+)norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Pemoline (including organometallic complexes and chelates thereof);
- (8) Phentermine;
- (9) Pipradrol;
- (10) SPA ((-)-1-dimethylamino-1, 2-dephenylethane).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts:

- (1) Pentazocine.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 10; 1986 c 124 § 6; 1981 c 147 § 2; 1980 c 138 § 4; 1971 ex.s. c 308 § 69.50.210.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.211 Schedule V tests. (a) The state board of pharmacy shall place a substance in Schedule V upon finding that:

- (1) the substance has low potential for abuse relative to the controlled substances included in Schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule IV.

(b) The state board of pharmacy may place a substance in Schedule V without being required to make the findings required by subsection (a) of this section if the substance is controlled under Schedule V of the federal Controlled Substances Act by a federal agency as the result of an

international treaty, convention, or protocol. [1993 c 187 § 11; 1971 ex.s. c 308 § 69.50.211.]

69.50.212 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule V:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: Buprenorphine.

(b) Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 12; 1986 c 124 § 7; 1980 c 138 § 5; 1971 ex.s. c 308 § 69.50.212.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.213 Republishing of schedules. The state board of pharmacy shall publish updated schedules annually. Failure to publish updated schedules is not a defense in any administrative or judicial proceeding under this chapter. [1993 c 187 § 13; 1971 ex.s. c 308 § 69.50.213.]

69.50.214 Controlled substance analog. A controlled substance analog, to the extent intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in Schedule I. Within thirty days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the prosecuting attorney shall notify the state board of pharmacy of information relevant to emergency scheduling as provided for in *RCW 69.50.201(f). After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may continue or take place. [1993 c 187 § 14.]

***Reviser's note:** RCW 69.50.201 was amended by 1998 c 245 § 108, changing subsection (f) to subsection (e).

ARTICLE III

REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

69.50.301 Rules—Fees. The board may adopt rules and the department may charge reasonable fees, relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [1993 c 187 § 15; 1991 c 229 § 9; 1989 1st ex.s. c 9 § 431; 1971 ex.s. c 308 § 69.50.301.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.302 Registration requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain annually a registration issued by the department in accordance with the board's rules.

(b) A person registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by the registration and in conformity with this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a substance included in Schedule V.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers upon finding it consistent with the public health and safety. Personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with rules adopted by the board. [1993 c 187 § 16; 1989 1st ex.s. c 9 § 432; 1971 ex.s. c 308 § 69.50.302.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920

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69.50.303 Registration. (a) The department shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless the board determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(2) compliance with applicable state and local law;

(3) promotion of technical advances in the art of manufacturing controlled substances and the development of new substances;

(4) any convictions of the applicant under any laws of another country or federal or state laws relating to any controlled substance;

(5) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(6) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(7) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(8) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture or distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances included in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic substances included in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with substances included in Schedule I may conduct research with substances included in Schedule I within this state upon furnishing the board evidence of that federal registration.

(d) A manufacturer or distributor registered under the federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., may submit a copy of the federal application as an application for registration as a manufacturer or distributor under this section. The board may require a manufacturer or distributor to submit information in addition to the application for registration under the federal act. [1993 c 187 § 17; 1989 1st ex.s. c 9 § 433; 1971 ex.s. c 308 § 69.50.303.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.304 Revocation and suspension of registration—Seizure or placement under seal of controlled substances. (a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or

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revoked by the state board of pharmacy upon finding that the registrant has:

(1) furnished false or fraudulent material information in any application filed under this chapter;

(2) been convicted of a felony under any state or federal law relating to any controlled substance;

(3) had the registrant's federal registration suspended or revoked and is no longer authorized by federal law to manufacture, distribute, or dispense controlled substances; or

(4) committed acts that would render registration under RCW 69.50.303 inconsistent with the public interest as determined under that section.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The department may seize or place under seal any controlled substance owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner contemplated by the registration. The controlled substance must be held for the benefit of the registrant or the registrant's successor in interest. The department shall notify a registrant, or the registrant's successor in interest, who has any controlled substance seized or placed under seal, of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. The department may not dispose of any controlled substance seized or placed under seal under this subsection until the expiration of one hundred eighty days after the controlled substance was seized or placed under seal. The costs incurred by the department in seizing, placing under seal, maintaining custody, and disposing of any controlled substance under this subsection may be recovered from the registrant, any proceeds obtained from the disposition of the controlled substance, or from both. Any balance remaining after the costs have been recovered from the proceeds of any disposition must be delivered to the registrant or the registrant's successor in interest.

(e) The department shall promptly notify the drug enforcement administration of all orders restricting, suspending, or revoking registration and all forfeitures of controlled substances. [1993 c 187 § 18; 1989 1st ex.s. c 9 § 434; 1986 c 124 § 8; 1971 ex.s. c 308 § 69.50.304.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.305 Procedure for denial, suspension, or revocation of registration. (a) Any registration, or exemption from registration, issued pursuant to the provisions of this chapter shall not be denied, suspended, or revoked unless the board denies, suspends, or revokes such registration,

or exemption from registration, by proceedings consistent with the administrative procedure act, chapter 34.05 RCW.

(b) The board may suspend any registration simultaneously with the institution of proceedings under RCW 69.50.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction. [1971 ex.s. c 308 § 69.50.305.]

69.50.306 Records of registrants. Persons registered, or exempted from registration under RCW 69.50.302(d), to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state board of pharmacy issues. [1971 ex.s. c 308 § 69.50.306.]

69.50.307 Order forms. Controlled substances in Schedule I and II shall be distributed by a registrant or person exempt from registration under RCW 69.50.302(d) to another registrant, or person exempt from registration under RCW 69.50.302(d), only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section. [1971 ex.s. c 308 § 69.50.307.]

69.50.308 Prescriptions. (a) A controlled substance may be dispensed only as provided in this section.

(b) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule II may not be dispensed without the written prescription of a practitioner.

(c) In emergency situations, as defined by rule of the state board of pharmacy, a substance included in Schedule II may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306. A prescription for a substance included in Schedule II may not be refilled.

(d) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III or IV, which is a prescription drug as determined under RCW 69.04.560, may not be dispensed without a written or oral prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(e) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner

within the meaning and intent of this chapter; and the person who knows or should know that the person is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

(f) A substance included in Schedule V must be distributed or dispensed only for a medical purpose.

(g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession. Medical treatment includes dispensing or administering a narcotic drug for pain, including intractable pain.

(h) No administrative sanction, or civil or criminal liability, authorized or created by this chapter may be imposed on a pharmacist for action taken in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(i) An individual practitioner may not dispense a substance included in Schedule II, III, or IV for that individual practitioner's personal use. [1993 c 187 § 19; 1971 ex.s. c 308 § 69.50.308.]

69.50.309 Containers. A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner, and the owner of any animal for which such controlled substance has been prescribed, sold, or dispensed may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [1971 ex.s. c 308 § 69.50.309.]

69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control. On and after September 21, 1977, a humane society and animal control agency may apply to the department for registration pursuant to the applicable provisions of this chapter for the sole purpose of being authorized to purchase, possess, and administer sodium pentobarbital to euthanize injured, sick, homeless, or unwanted domestic pets and animals. Any agency so registered shall not permit a person to administer sodium pentobarbital unless such person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering this drug.

The department may issue a limited registration to carry out the provisions of this section. The board shall promulgate such rules as it deems necessary to insure strict compliance with the provisions of this section. The board may suspend or revoke registration upon determination that the person administering sodium pentobarbital has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [1989 1st ex.s. c 9 § 435; 1977 ex.s. c 197 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.311 Triplicate prescription form program—Compliance by health care practitioners. Any licensed health care practitioner with prescription or dispensing

authority shall, as a condition of licensure and as directed by the practitioner's disciplinary board, consent to the requirement, if imposed, of complying with a triplicate prescription form program as may be established by rule by the department of health. [1989 1st ex.s. c 9 § 436; 1984 c 153 § 20.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.312 Electronic communication of prescription information—Board may adopt rules. (1) Information concerning an original prescription or information concerning a prescription refill for a controlled substance may be electronically communicated to a pharmacy of the patient's choice pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section. [1998 c 222 § 4.]

ARTICLE IV OFFENSES AND PENALTIES

69.50.401 Prohibited acts: A—Penalties. (a) Except as authorized by this chapter, it is unlawful for any person

to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) amphetamine or methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(iii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule IV, except flunitrazepam, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) a counterfeit substance which is methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(iii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(1)(iii) of this section any person found guilty of possession of forty grams or less of marijuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410. [1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

Reviser's note: This section was amended by 1998 c 82 § 2 and by 1998 c 290 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—1998 c 290: "This act applies to crimes committed on or after July 1, 1998." [1998 c 290 § 9.]

Effective date—1998 c 290: "This act takes effect July 1, 1998." [1998 c 290 § 10.]

Severability—1998 c 290: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 290 § 11.]

Application—1989 c 271 §§ 101 through 111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

Severability—1987 c 458: See note following RCW 48.21.160.

Serious drug offenders, notice of release or escape: RCW 9.94A.154.

69.50.402 Prohibited acts: B—Penalties. (a) It is unlawful for any person:

(1) who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(2) who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the board of pharmacy pursuant to chapter 34.05 RCW; or

(ii) any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the board of pharmacy pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesia, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the state board of pharmacy before the investigation has been begun: PROVIDED, That the board of pharmacy, in consultation with the medical quality assurance commission and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: AND PROVIDED, FURTHER, That investigations by the board of pharmacy of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (a)(3) of this section shall be done in consultation with the medical quality assurance commission;

(4) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(5) to refuse an entry into any premises for any inspection authorized by this chapter; or

(6) knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [1994 sp.s. c 9 § 740; 1980 c 138 § 6; 1979 ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

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

69.50.403 Prohibited acts: C—Penalties. (a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by RCW 69.50.307;

(2) To use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address.

(4) To falsely assume the title of, or represent herself or himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance.

(5) To make or utter any false or forged prescription or false or forged written order.

(6) To affix any false or forged label to a package or receptacle containing controlled substances.

(7) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

(8) To possess a false or fraudulent prescription with intent to obtain a controlled substance.

(9) To attempt to illegally obtain controlled substances by providing more than one name to a practitioner when obtaining a prescription for a controlled substance. If a person's name is legally changed during the time period that he or she is receiving health care from a practitioner, the person shall inform all providers of care so that the medical and pharmacy records for the person may be filed under a single name identifier.

(b) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

(c) A person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, or fined not more than two thousand dollars, or both. [1996 c 255 § 1; 1993 c 187 § 21; 1971 ex.s. c 308 § 69.50.403.]

69.50.404 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [1971 ex.s. c 308 § 69.50.404.]

69.50.405 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [1971 ex.s. c 308 § 69.50.405.]

69.50.406 Distribution to persons under age eighteen. (a) Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or

methamphetamine, or flunitrazepam listed in Schedule IV, to a person under eighteen years of age is punishable by the fine authorized by RCW 69.50.401(a)(1) (i) or (ii), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(a)(1) (i) or (ii), or by both.

(b) Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by RCW 69.50.401(a)(1) (iii), (iv), or (v), by a term of imprisonment up to twice that authorized by RCW 69.50.401(a)(1) (iii), (iv), or (v), or both. [1998 c 290 § 2; 1996 c 205 § 7; 1987 c 458 § 5; 1971 ex.s. c 308 § 69.50.406.]

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.407 Conspiracy. Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. [1971 ex.s. c 308 § 69.50.407.]

69.50.408 Second or subsequent offenses. (a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under RCW 69.50.401(d). [1989 c 8 § 3; 1971 ex.s. c 308 § 69.50.408.]

69.50.410 Prohibited acts: D—Penalties. (1) Except as authorized by this chapter it shall be unlawful for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense. Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the

department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation. Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: PROVIDED, That the *board of prison terms and paroles under RCW 9.95.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(5) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 as now or hereafter amended. [1975-'76 2nd ex.s. c 103 § 1; 1973 2nd ex.s. c 2 § 2.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indefinite sentence review board" by 1986 c 224, effective July 1, 1986.

69.50.412 Prohibited acts: E—Penalties. (1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound,

convert, produce, process, prepare, test, analyze, pack, re-pack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor. [1981 c 48 § 2.]

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.4121 Drug paraphernalia—Selling or giving—

Penalty. (1) Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. Drug paraphernalia includes, but is not limited to objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs; and

(m) Ice pipes or chillers.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs. [1998 c 317 § 1.]

Reviser's note: 1998 c 317 directed that this section be added to chapter 26.28 RCW. This section has been codified in chapter 69.50 RCW, which relates more directly to controlled substances.

69.50.413 Health care practitioners—Suspension of license for violation of chapter. The license of any licensed health care practitioner shall be suspended for any violation of this chapter. The suspension shall run concurrently with, and not less than, the term of the sentence for the violation. [1984 c 153 § 21.]

69.50.414 Sale or transfer of controlled substance to minor—Cause of action by parent—Damages. The parent or legal guardian of any minor to whom a controlled substance, as defined in RCW 69.50.101, is sold or transferred, shall have a cause of action against the person who sold or transferred the controlled substance for all damages to the minor or his or her parent or legal guardian caused by such sale or transfer. Damages shall include: (a) Actual damages, including the cost for treatment or rehabilitation of the minor child's drug dependency, (b) forfeiture to the parent or legal guardian of the cash value of any proceeds received from such sale or transfer of a controlled substance, and (c) reasonable attorney fees.

This section shall not apply to a practitioner, as defined in *RCW 69.50.101(t), who sells or transfers a controlled substance to a minor pursuant to a valid prescription or order. [1986 c 124 § 10.]

***Reviser's note:** The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section.

69.50.415 Controlled substances homicide—Penalty.

(a) A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(a)(1) (i), (ii), or (iii) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

(b) Controlled substances homicide is a class B felony punishable according to RCW 9A.20.021. [1996 c 205 § 8; 1987 c 458 § 2.]

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.416 Counterfeit substances prohibited—Penalties. (a) It is unlawful for any person knowingly or intentionally to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.

(b) It is unlawful for any person knowingly or intentionally to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.

(c) A person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more

than two years, fined not more than two thousand dollars, or both. [1993 c 187 § 22.]

69.50.420 Violations—Juvenile driving privileges.

(1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 120; 1988 c 148 § 5.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265

69.50.425 Misdemeanor violations—Minimum imprisonment. A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community service. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred. [1989 c 271 § 105.]

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.430 Additional fine for certain felony violations. (1) Every person convicted of a felony violation of RCW 69.50.401, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars

in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court. [1989 c 271 § 106.]

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions. (a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana to a person:

- (1) In a school;
- (2) On a school bus;
- (3) Within one thousand feet of a school bus route stop designated by the school district;
- (4) Within one thousand feet of the perimeter of the school grounds;
- (5) In a public park;
- (6) In a public housing project designated by a local governing authority as a drug-free zone;
- (7) On a public transit vehicle;
- (8) In a public transit stop shelter;
- (9) At a civic center designated as a drug-free zone by the local governing authority; or
- (10) Within one thousand feet of the perimeter of a facility designated under (9) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter

may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated by a local governing authority as a drug-free zone, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (a)(9) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated by a local governing authority as a drug-free zone, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (a)(9) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

(d) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(e) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, transit authority, or public housing authority if the map or diagram is otherwise admissible under court rule.

(f) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(2) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(3) "School bus route stop" means a school bus stop as designated by a school district;

(4) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(5) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(6) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(7) "Stop shelter" means a passenger shelter designated by a transit authority;

(8) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities;

(9) "Public housing project" means the same as "housing project" as defined in RCW 35.82.020. [1997 c 30 § 2; 1997 c 23 § 1; 1996 c 14 § 2; 1991 c 32 § 4. Prior: 1990 c 244 § 1; 1990 c 33 § 588; 1989 c 271 § 112.]

Reviser's note: This section was amended by 1997 c 23 § 1 and by 1997 c 30 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—1997 c 30: "The legislature finds that a large number of illegal drug transactions occur in or near public housing projects. The legislature also finds that this activity places the families and children residing in these housing projects at risk for drug-related crimes and increases the general level of fear among the residents of the housing project and the areas surrounding these projects. The intent of the legislature is to allow local governments to designate public housing projects as drug-free zones." [1997 c 30 § 1.]

Findings—Intent—1996 c 14: "The legislature finds that a large number of illegal drug transactions occur in or near publicly owned places used for recreational, educational, and cultural purposes. The legislature also finds that this activity places the people using these facilities at risk for drug-related crimes, discourages the use of recreational, educational, and cultural facilities, blights the economic development around these facilities, and increases the general level of fear among the residents of the areas surrounding these facilities. The intent of the legislature is to allow local governments to designate a perimeter of one thousand feet around publicly owned places used primarily for recreation, education, and cultural activities as drug-free zones." [1996 c 14 § 1.]

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

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.440 Possession with intent to manufacture—Penalty. It is unlawful for any person to possess ephedrine or pseudoephedrine with intent to manufacture methamphetamine. Any person who violates this section is guilty of a crime and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost. [1997 c 71 § 3; 1996 c 205 § 1.]

ARTICLE V ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

69.50.500 Powers of enforcement personnel. (a) It is hereby made the duty of the state board of pharmacy, the department, and their officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the department of health, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter. [1989 1st ex.s. c 9 § 437; 1971 ex.s. c 308 § 69.50.500.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.501 Administrative inspections. The state board of pharmacy may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW 69.50.502 an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 34.05 RCW, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing. [1971 ex.s. c 308 § 69.50.501.]

69.50.502 Warrants for administrative inspections. Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of a superior court, or a judge of a district court within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(a) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(b) be directed to a person authorized by RCW 69.50.500 to execute it;

(c) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(d) identify the item or types of property to be seized, if any;

(e) direct that it be served during normal business hours and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in which the inspection was made. [1971 ex.s. c 308 § 69.50.502.]

69.50.503 Injunctions. (a) The superior courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section. [1971 ex.s. c 308 § 69.50.503.]

69.50.504 Cooperative arrangements. The state board of pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. [1971 ex.s. c 308 § 69.50.504.]

69.50.505 Seizure and forfeiture. (a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting

any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (1) or (2), except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.401(e);

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(6) All drug paraphernalia;

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of

any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(b) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9 RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of

ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. In cases involving personal property, the burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving real property, the burden of producing evidence shall be upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture shall be upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

(f) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(3) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) Forward it to the drug enforcement administration for disposition.

(g)(1) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(2) Each seizing agency shall retain records of forfeited property for at least seven years.

(3) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(4) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(h)(1) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the *drug enforcement and education account under RCW 69.50.520.

(2) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling

agents, and the cost of any valid landlord's claim for damages under subsection (n) of this section.

(3) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(i) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(j) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(k) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(l) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(m) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(n) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (f)(2) of this section, only if:

(1) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(2) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (2) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the govern-

mental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(3) For any claim filed under (2) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(o) The landlord's claim for damages under subsection (n) of this section may not include a claim for loss of business and is limited to:

(1) Damage to tangible property and clean-up costs;

(2) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(3) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (f)(2) of this section; and

(4) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (h)(2) of this section.

(p) Subsections (n) and (o) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (n) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency. [1993 c 487 § 1; 1992 c 211 § 1. Prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

***Reviser's note:** The "drug enforcement and education account" was redesignated as the "violence reduction and drug enforcement account" by 1994 sp.s. c 7 § 910.

Effective date—1990 c 213 §§ 2, 12: See note following RCW 64.44.010

Severability—1990 c 213: See RCW 64.44.901.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the

substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—Effective date—1982 c 171: See RCW 69.52.900 and 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.506 Burden of proof; liabilities. (a) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties. [1971 ex.s. c 308 § 69.50.506.]

69.50.507 Judicial review. All final determinations, findings and conclusions of the state board of pharmacy under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the superior court wherein he resides or in the superior court of Thurston county, such review to be in conformity with the administrative procedure act, chapter 34.05 RCW. [1971 ex.s. c 308 § 69.50.507.]

69.50.508 Education and research. (a) The state board of pharmacy may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The board may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The board may enter into contracts for educational and research activities without performance bonds.

(d) The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [1971 ex.s. c 308 § 69.50.508.]

69.50.509 Search and seizure of controlled substances. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, district court, or municipal court that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him or her to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale,

barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions taken pursuant to this chapter. [1987 c 202 § 228; 1971 ex.s. c 308 § 69.50.509.]

Intent—1987 c 202: See note following RCW 2.04.190.

69.50.510 Search and seizure at rental premises—Notification of landlord. Whenever a controlled substance which is manufactured, distributed, dispensed, or acquired in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 9.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.50.511 Clean-up of hazardous substances at illegal drug manufacturing facility—Rules. Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in *RCW 70.105D.020(5), shall notify the department of ecology for the purpose of securing a contractor to identify, clean-up, store, and dispose of suspected hazardous substances, except for those random and representative samples obtained for evidentiary purposes. Whenever possible, a destruct order covering hazardous substances which may be described in general terms shall be obtained concurrently with a search warrant. Materials that have been photographed, fingerprinted, and subsampled by police shall be destroyed as soon as practical. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section. [1990 c 213 § 13; 1989 c 271 § 228.]

***Reviser's note:** RCW 70.105D.020 was amended by 1994 c 254 § 2, changing subsection (5) to subsection (6); and was subsequently amended by 1995 c 70 § 1, changing subsection (6) to subsection (7).

Severability—1990 c 213: See RCW 64.44.901.

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.520 Violence reduction and drug enforcement account. The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(8), 66.24.210(4), 66.24.290(2),

69.50.505(h)(1), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., including state incarceration costs. Funds from the account may also be appropriated to reimburse local governments for costs associated with implementing criminal justice legislation including chapter 338, Laws of 1997. During the 1997-1999 biennium, funds from the account may also be used for costs associated with conducting a feasibility study of the department of corrections' offender-based tracking system, providing grants to local governments in accordance with chapter 338, Laws of 1997, and for multijurisdictional narcotics task forces. After July 1, 1999, at least seven and one-half percent of expenditures from the account shall be used for providing grants to community networks under chapter 70.190 RCW by the family policy council. [1998 c 346 § 909. Prior: 1997 c 451 § 2; 1997 c 338 § 69; 1997 c 149 § 912; 1995 2nd sp.s. c 18 § 919; 1994 sp.s. c 7 § 910; 1989 c 271 § 401.]

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Effective date—1997 c 451: See note following RCW 66.24.290.

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

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

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

Appropriation—Standards—1990 c 275 § 4; 1989 c 271 § 401: "The sum of one million eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the office of the administrator for the courts for the treatment alternatives to street crime program. These funds shall be used for providing services in domestic cases to children and to parents or others having custody of children under chapter 26.09, 26.10, 26.26, 26.44, or 26.50 RCW. These funds shall not be available for expenditure until January 1, 1990. The office of the administrator for the courts shall establish standards for the courts to recover the expenses of the program specified in this section from the participants, based upon the individual participant's ability to pay. All fees collected shall be remitted to the state treasurer for deposit in the drug enforcement and education account under RCW 69.50.520." [1990 c 275 § 4; 1989 c 271 § 420.]

Captions not law—1989 c 271: "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.525 Diversion prevention and control—Report. (a) As used in this section, "diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(b) The department shall regularly prepare and make available to other state regulatory, licensing, and law enforcement agencies a report on the patterns and trends of actual distribution, diversion, and abuse of controlled substances.

(c) The department shall enter into written agreements with local, state, and federal agencies for the purpose of

improving identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent, and control drug diversion and drug abuse. The department shall convene periodic meetings to coordinate a state diversion prevention and control program. The department shall arrange for cooperation and exchange of information among agencies and with neighboring states and the federal government. [1998 c 245 § 109; 1993 c 187 § 20.]

ARTICLE VI MISCELLANEOUS

69.50.601 Pending proceedings. (a) Prosecution for any violation of law occurring prior to May 21, 1971 is not affected or abated by this chapter. If the offense being prosecuted is similar to one set out in Article IV of this chapter, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 21, 1971 are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 21, 1971. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to May 21, 1971 and who are registered or licensed by the state.

(e) This chapter applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 21, 1971. [1971 ex.s. c 308 § 69.50.601.]

69.50.602 Continuation of rules. Any orders and rules promulgated under any law affected by this chapter and in effect on May 21, 1971 and not in conflict with it continue in effect until modified, superseded or repealed. [1971 ex.s. c 308 § 69.50.602.]

69.50.603 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it. [1971 ex.s. c 308 § 69.50.603.]

69.50.604 Short title. This chapter may be cited as the Uniform Controlled Substances Act. [1971 ex.s. c 308 § 69.50.604.]

69.50.605 Severability—1971 ex.s. c 308. If any provision of this act or the application thereof to any person

or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 308 § 69.50.605.]

69.50.606 Repealers. The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act:

(1) Section 2072, Code of 1881, section 418, chapter 249, Laws of 1909, section 4, chapter 205, Laws of 1963 and RCW 9.91.030;

(2) Section 69.33.220, chapter 27, Laws of 1959, section 7, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.220;

(3) Sections 69.33.230 through 69.33.280, chapter 27, Laws of 1959 and RCW 69.33.230 through 69.33.280;

(4) Section 69.33.290, chapter 27, Laws of 1959, section 1, chapter 97, Laws of 1959 and RCW 69.33.290;

(5) Section 69.33.300, chapter 27, Laws of 1959, section 8, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.300;

(6) Sections 69.33.310 through 69.33.400, chapter 27, Laws of 1959 and RCW 69.33.310 through 69.33.400;

(7) Section 69.33.410, chapter 27, Laws of 1959, section 20, chapter 38, Laws of 1963 and RCW 69.33.410;

(8) Sections 69.33.420 through 69.33.440, 69.33.900 through 69.33.950, chapter 27, Laws of 1959 and RCW 69.33.420 through 69.33.440, 69.33.900 through 69.33.950;

(9) Section 255, chapter 249, Laws of 1909 and RCW 69.40.040;

(10) Section 1, chapter 6, Laws of 1939, section 1, chapter 29, Laws of 1939, section 1, chapter 57, Laws of 1945, section 1, chapter 24, Laws of 1955, section 1, chapter 49, Laws of 1961, section 1, chapter 71, Laws of 1967, section 9, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.060;

(11) Section 1, chapter 23, Laws of 1955, section 2, chapter 49, Laws of 1961, section 2, chapter 71, Laws of 1967 and RCW 69.40.061;

(12) Section 21, chapter 38, Laws of 1963 and RCW 69.40.063;

(13) Section 2, chapter 6, Laws of 1939, section 23, chapter 38, Laws of 1963, section 10, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.070;

(14) Section 12, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.075;

(15) Section 1, chapter 205, Laws of 1963 and RCW 69.40.080;

(16) Section 2, chapter 205, Laws of 1963 and RCW 69.40.090;

(17) Section 3, chapter 205, Laws of 1963 and RCW 69.40.100;

(18) Section 11, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.110;

(19) Section 1, chapter 33, Laws of 1970 ex. sess. and RCW 69.40.120; and

(20) Section 1, chapter 80, Laws of 1970 ex. sess. [1971 ex.s. c 308 § 69.50.606.]

69.50.607 Effective date—1971 ex.s. c 308. This act is necessary for the immediate preservation of the public

peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1971 ex.s. c 308 § 69.50.607.]

Reviser's note: The effective date of 1971 ex.s. c 308 was May 21, 1971.

69.50.608 State preemption. The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 601.]

69.50.609 Captions not law—1993 c 187. Section captions as used in this act constitute no part of the law. [1993 c 187 § 23.]

Chapter 69.51

CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH ACT

Sections

69.51.010	Short title.
69.51.020	Legislative purpose.
69.51.030	Definitions.
69.51.040	Controlled substances therapeutic research program.
69.51.050	Patient qualification review committee.
69.51.060	Sources and distribution of marijuana.
69.51.080	Cannabis and related products considered Schedule II substances.

69.51.010 Short title. This chapter may be cited as the Controlled Substances Therapeutic Research Act. [1979 c 136 § 1.]

69.51.020 Legislative purpose. The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances. It is for this purpose that the Controlled Substances Therapeutic Research Act is hereby enacted. [1979 c 136 § 2.]

69.51.030 Definitions. As used in this chapter:

- (1) "Board" means the state board of pharmacy;
- (2) "Department" means the department of health.
- (3) "Marijuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin; and

(4) "Practitioner" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW. [1989 1st ex.s. c 9 § 438; 1979 c 136 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.51.040 Controlled substances therapeutic research program. (1) There is established in the board the controlled substances therapeutic research program. The program shall be administered by the department. The board shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the board shall take into consideration those pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation. No patient may be admitted to the controlled substances therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The board shall provide by rule for a program of registration with the department of bona fide controlled substance therapeutic research projects. [1989 1st ex.s. c 9 § 439; 1979 c 136 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.51.050 Patient qualification review committee.

(1) The board shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

(a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology;

(b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical oncology;

(c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and

(d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the board shall insure that the privacy of individuals who

participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the board, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [1979 c 136 § 5.]

69.51.060 Sources and distribution of marijuana.

(1) The board shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations promulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The board may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The board shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the board. [1979 c 136 § 6.]

69.51.080 Cannabis and related products considered Schedule II substances. (1) The enumeration of tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in RCW 69.50.204 as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this chapter.

(2) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in RCW 69.50.206 only for the purposes enumerated in this chapter. [1979 c 136 § 8.]

Chapter 69.52

IMITATION CONTROLLED SUBSTANCES

Sections

69.52.010	Legislative findings.
69.52.020	Definitions.
69.52.030	Violations—Exceptions.
69.52.040	Seizure of contraband.
69.52.045	Seizure at rental premises—Notification of landlord.
69.52.050	Injunctive action by attorney general authorized.
69.52.060	Injunctive or other legal action by manufacturer of controlled substances authorized.

69.52.070 Violations—Juvenile driving privileges.
 69.52.900 Severability—1982 c 171.
 69.52.901 Effective date—1982 c 171.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

69.52.010 Legislative findings. The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety. [1982 c 171 § 2.]

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

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

(3) "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

(a) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(b) Statements made to the recipient that the substance may be resold for inordinate profit; or

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(4) "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, or labeling or relabeling of an imitation controlled substance. [1982 c 171 § 3.]

69.52.030 Violations—Exceptions. (1) It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall, upon conviction, be guilty of a class C felony.

(2) Any person eighteen years of age or over who violates subsection (1) of this section by distributing an imitation controlled substance to a person under eighteen years of age is guilty of a class B felony.

(3) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale imitation controlled substances. Any person who violates this subsection is guilty of a class C felony.

(4) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in *RCW 69.50.101(t), in the course of professional practice or research.

(5) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact. [1983 1st ex.s. c 4 § 5; 1982 c 171 § 4.]

***Reviser's note:** The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section.

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

69.52.040 Seizure of contraband. Imitation controlled substances shall be subject to seizure, forfeiture, and disposition in the same manner as are controlled substances under RCW 69.50.505. [1982 c 171 § 5.]

69.52.045 Seizure at rental premises—Notification of landlord. Whenever an imitation controlled substance which is manufactured, distributed, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 10.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.52.050 Injunctive action by attorney general authorized. The attorney general is authorized to apply for injunctive action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 6.]

69.52.060 Injunctive or other legal action by manufacturer of controlled substances authorized. Any manufacturer of controlled substances licensed or registered in a state requiring such licensure or registration, may bring injunctive or other action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 7.]

69.52.070 Violations—Juvenile driving privileges. (1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any

offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 121; 1988 c 148 § 6.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.52.900 Severability—1982 c 171. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1982 c 171 § 8.]

69.52.901 Effective date—1982 c 171. This act shall take effect on July 1, 1982. [1982 c 171 § 10.]

Chapter 69.53

USE OF BUILDINGS FOR UNLAWFUL DRUGS

Sections

- 69.53.010 Unlawful use of building for drug purposes—Liability of owner or manager—Penalty.
- 69.53.020 Unlawful fortification of building for drug purposes—Penalty.
- 69.53.030 Unlawful use of fortified building—Penalty.

69.53.010 Unlawful use of building for drug purposes—Liability of owner or manager—Penalty. (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly rent, lease, or make available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this

section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 13; 1987 c 458 § 7.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1987 c 458: See note following RCW 48.21.160.

69.53.020 Unlawful fortification of building for drug purposes—Penalty. (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly allow the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the unlawful manufacture, delivery, sale, storage, or gift of any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 14; 1987 c 458 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1987 c 458: See note following RCW 48.21.160.

69.53.030 Unlawful use of fortified building—Penalty. (1) It is unlawful for any person to use a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to unlawfully manufacture, deliver, sell, store, or give away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1987 c 458 § 9.]

Severability—1987 c 458: See note following RCW 48.21.160.

Chapter 69.60

OVER-THE-COUNTER MEDICATIONS

Sections

- 69.60.010 Legislative findings.
- 69.60.020 Definitions.
- 69.60.030 Identification required.
- 69.60.040 Imprint information—Publication—Availability.
- 69.60.050 Noncompliance—Contraband—Fine.
- 69.60.060 Rules.
- 69.60.070 Imprinting requirements—Retailers and wholesalers.
- 69.60.080 Exemptions—Application by manufacturer.
- 69.60.090 Implementation of federal system—Termination of state system.
- 69.60.900 Severability—1993 c 135.
- 69.60.901 Effective date—1993 c 135.

69.60.010 Legislative findings. The legislature of the state of Washington finds that:

(1) Accidental and purposeful ingestions of solid medication forms continue to be the most frequent cause of poisoning in our state;

(2) Modern treatment is dependent upon knowing the ingredients of the ingestant;

(3) The imprinting of identifying characteristics on all tablets, capsules, and caplets of prescription medication forms, both trade name products and generic products, has been extremely beneficial in our state and was accomplished at trivial cost to the manufacturers and consumers;

(4) Although over-the-counter medications usually constitute a lower order of risk to ingesters, treatment after overdose is equally dependent upon knowing the ingredients involved, but there is no coding index uniformly used by this class of medication;

(5) Approximately seventy percent of over-the-counter medications in solid form already have some type of an identifier imprinted on their surfaces;

(6) While particular efforts are being instituted to prevent recurrent tampering with over-the-counter medications, the added benefit of rapid and prompt identification of all possible contaminated products, including over-the-counter medications, would make for a significant improvement in planning for appropriate tracking and monitoring programs;

(7) At the same time, health care professionals serving the elderly find it especially advantageous to be able to identify and confirm the ingredients of their multiple medications, including over-the-counter products, as are often consumed by such patients;

(8) The legislature supports and encourages efforts that are being made to establish a national, legally enforceable system governing the imprinting of solid dosage form over-the-counter medications, which system is consistent with the requirements of this chapter. [1989 c 247 § 1.]

69.60.020 Definitions. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Solid dosage form" means capsules or tablets or similar over-the-counter medication products intended for administration and which could be ingested orally.

(2) "Over-the-counter medication" means a drug that can be obtained without a prescription and is not restricted to use by prescribing practitioners. For purposes of this chapter, over-the-counter medication does not include vitamins.

(3) "Board" means the state board of pharmacy.

(4) "Purveyor" means any corporation, person, or other entity that offers over-the-counter medications for wholesale, retail, or other type of sale. [1989 c 247 § 3.]

69.60.030 Identification required. (1) No over-the-counter medication in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer or distributor of the medication: PROVIDED, HOWEVER, That an over-the-counter medication which has

clearly marked or imprinted on it a distinctive logo, symbol, product name, letters, or other identifying mark, or which by its color, shape, or size together with a distinctive logo, symbol, product name, letters, or other mark is identifiable, shall be deemed in compliance with the provisions of this chapter.

(2) No manufacturer may sell any over-the-counter medication in solid dosage form contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer, packer, or distributor of the medication. [1993 c 135 § 1; 1989 c 247 § 2.]

69.60.040 Imprint information—Publication—Availability. Each manufacturer shall publish and provide to the board printed material which will identify each current imprint used by the manufacturer and the board shall be notified of any change. This information shall be provided by the board to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 c 247 § 4.]

69.60.050 Noncompliance—Contraband—Fine. (1) Any over-the-counter medication prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure, in the same manner as contraband legend drugs under RCW 69.41.060.

(2) A purveyor who fails to comply with this chapter after one notice of noncompliance by the board is subject to a one thousand dollar civil fine for each instance of noncompliance. [1989 c 247 § 5.]

69.60.060 Rules. The board shall have authority to promulgate rules for the enforcement and implementation of this chapter. [1989 c 247 § 6.]

69.60.070 Imprinting requirements—Retailers and wholesalers. All over-the-counter medications manufactured in, received by, distributed to, or shipped to any retailer or wholesaler in this state after January 1, 1994, shall meet the requirements of this chapter. No over-the-counter medication may be sold to a consumer in this state after January 1, 1995, unless such over-the-counter medication complies with the imprinting requirements of this chapter. [1993 c 135 § 2; 1989 c 247 § 7.]

69.60.080 Exemptions—Application by manufacturer. The board, upon application of a manufacturer, may exempt an over-the-counter drug from the requirements of chapter 69.60 RCW on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics. [1989 c 247 § 8.]

69.60.090 Implementation of federal system—Termination of state system. Before January 1, 1994, the board of pharmacy will consult with the state toxicologist to determine whether the federal government has established a legally enforceable system that is substantially equivalent to the requirements of this chapter that govern the imprinting of solid dosage form over-the-counter medication. To be substantially equivalent, the effective dates for implementation of the federal system for imprinting solid dosage form over-the-counter medication must be the same or earlier than the dates of implementation set out in the state system for imprinting solid dosage form over-the-counter medication. If the board determines that the federal system for imprinting solid dosage form over-the-counter medication is substantially equivalent to the state system for imprinting solid dosage form over-the-counter medication, this chapter will cease to exist on January 1, 1994. If the board determines that the federal system is substantially equivalent, except that the federal dates for implementation are later than the Washington state dates, this chapter will cease to exist when the federal system is implemented. [1993 c 135 § 3; 1989 c 247 § 9.]

69.60.900 Severability—1993 c 135. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 135 § 4.]

69.60.901 Effective date—1993 c 135. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]. [1993 c 135 § 5.]

Chapter 69.80

FOOD DONATION AND DISTRIBUTION—LIABILITY

Sections

69.80.010	Purpose.
69.80.020	Definitions.
69.80.031	Good samaritan food donation act—Definitions—Collecting, distributing, gleaning—Liability.
69.80.040	Information and referral service for food donation program.
69.80.050	Inspection of donated food by state and local agencies.
69.80.900	Construction.

69.80.010 Purpose. The purpose of this chapter is to promote the free distribution of food to needy persons, prevent waste of food products, and provide liability protection for persons and organizations donating or distributing such food products. [1983 c 241 § 1.]

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

(1) "Distributing organization" means a charitable nonprofit organization under section 501(c) of the federal internal revenue code which distributes food free of charge and includes any nonprofit organization that distributes food

free of charge to other nonprofit organizations or to the public.

(2) "Donor" means a person, corporation, association, or other organization which donates food to a distributing organization. "Donor" includes, but is not limited to, farmers, processors, distributors, wholesalers, and retailers of food. "Donor" also includes persons who harvest agricultural crops or perishable foods which have been donated by the owner to a distributing organization.

(3) "Food" means food products for human consumption as defined in RCW 69.04.008. [1983 c 241 § 2.]

69.80.031 Good samaritan food donation act—Definitions—Collecting, distributing, gleaning—Liability.

(1) This section may be cited as the "good samaritan food donation act."

(2) As used in this section:

(a) "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(b) "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(c) "Donate" means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(d) "Food" means a raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(e) "Gleaner" means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(f) "Grocery product" means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(g) "Gross negligence" means voluntary and conscious conduct by a person with knowledge, at the time of the conduct, that the conduct is likely to be harmful to the health or well-being of another person.

(h) "Intentional misconduct" means conduct by a person with knowledge, at the time of the conduct, that the conduct is harmful to the health or well-being of another person.

(i) "Nonprofit organization" means an incorporated or unincorporated entity that:

(i) Is operating for religious, charitable, or educational purposes; and

(ii) Does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(j) "Person" means an individual, corporation, partnership, organization, association, or governmental entity,

including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, councilmember, or other elected or appointed individual responsible for the governance of the entity.

(3) A person or gleaner is not subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this subsection does not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.

(4) A person who allows the collection or gleaned of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals is not subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this subsection does not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(5) If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by federal, state, and local laws and regulations, the person or gleaner who donates the food and grocery products is not subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products:

(a) Is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(b) Agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(c) Is knowledgeable of the standards to properly recondition the donated food or grocery product.

(6) This section may not be construed to create liability. [1994 c 299 § 36.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

69.80.040 Information and referral service for food donation program. The department of agriculture shall maintain an information and referral service for persons and organizations that have notified the department of their desire to participate in the food donation program under this chapter. [1983 c 241 § 4.]

69.80.050 Inspection of donated food by state and local agencies. Appropriate state and local agencies are authorized to inspect donated food items for wholesomeness and may establish procedures for the handling of food items. [1983 c 241 § 6.]

69.80.900 Construction. Nothing in this chapter may be construed to create any liability of, or penalty against a

donor or distributing organization except as provided in RCW 69.80.031. [1994 c 299 § 38; 1983 c 241 § 5.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Chapter 69.90

KOSHER FOOD PRODUCTS

Sections

69.90.010	Definitions.
69.90.020	Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations.
69.90.030	Violation of chapter is violation of consumer protection act.
69.90.040	Violation of chapter is gross misdemeanor.
69.90.900	Short title.

Organic food products: Chapter 15.86 RCW.

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

(1) "Food product" includes any article other than drugs, whether in raw or prepared form, liquid or solid, or packaged or unpackaged, and which is used for human consumption.

(2) "Kosher" means a food product which has been prepared, processed, manufactured, maintained, and sold in accordance with the requisites of traditional Jewish dietary law.

(3) "Person" includes individuals, partnerships, corporations, and associations. [1985 c 127 § 2.]

69.90.020 Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations. No person may knowingly sell or offer for sale any food product represented as "kosher" or "kosher style" when that person knows that the food product is not kosher and when the representation is likely to cause a prospective purchaser to believe that it is kosher. Such a representation can be made orally or in writing, or by display of a sign, mark, insignia, or simulation. [1985 c 127 § 3.]

69.90.030 Violation of chapter is violation of consumer protection act. A violation of this chapter shall constitute a violation of the consumer protection act, chapter 19.86 RCW. [1985 c 127 § 4.]

69.90.040 Violation of chapter is gross misdemeanor. Any person who violates any provision of this chapter shall be guilty of a gross misdemeanor. [1985 c 127 § 5.]

69.90.900 Short title. This chapter shall be known as the sale of kosher food products act of 1985. [1985 c 127 § 1.]